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Federal Land Sales and Exchanges

Jon K. Mulford

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FEDERAL LAND SALES AND EXCHANGES

by

JON K. MULFORD

ASPEN, COLORADO

Visiting Fellow 1983-84
Natural Resources Law Center
University of Colorado School of Law
Boulder, Colorado

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I. OVERVIEW OF PUBLIC LANDS TENURE POLICY HISTORY

A. Acquisition of the Public Domain

The history of public land acquisition and disposal has always been entwined with the Constitutional problems of the role of the federal government in relation to the states and citizens. Following the Revolutionary War the federal government began to acquire land, first by cession from the original thirteen states of the "wastelands" west of the Allegheny Mountains and north of the Ohio River, to the Mississippi River. The acquisition of the Louisiana Territory followed in 1803, and then other major acquisitions through purchase and conquest.

1. State Cessions

The Articles of Confederation ratified in 1781 did not deal with the land claims of seven of the original thirteen states to unoccupied lands to the west. The six states with no western lands argued that they should be held for the common benefit of all the states, believing that the lands won from Great Britain were the bounty of a common effort, and fearing that settlement under the dominion of the other states would result in a dilution of the powers in the federal system of the non-public land states. Maryland, having no public land claims, declined to ratify the Articles until the Continental Congress requested that the states with western land claims relinquish them to be held for the common benefit of the United States, thereafter to be settled and admitted as new states with the same rights as the original states. Beginning in 1784 (New York) and ending in 1802 (Georgia) the seven states ceded their western territories to the new federal government.

Thus the United States acquired the first public domain lands, both title and sovereign jurisdiction.

2. Purchase, Conquest and Treaties

In 1803 the United States purchased the vast Louisiana Territory from France after that country acquired title from Spain in 1800. Spanish and French control of the Mississippi waterways had threatened to impede development of the western territories, as well as threatening the military security of the young nation. The Louisiana Purchase doubled the land territory of the United States.

In 1810 the United States occupied western Florida on the claim that it was part of the Louisiana Purchase. By treaty in 1819 Spain ceded all of Florida to the United States, together with an area in western Colorado that had been in question.

Mexico won independence from Spain in 1821, but the 1835 Mexican Constitution severely restricted the powers of its

states, and Texas seceded in 1836. Although Texas was admitted to the Union in 1845, no public lands were ceded to the United States. In 1850 the United States purchased from Texas and added to the public domain the area which is now southwestern Kansas, southeastern Colorado, eastern New Mexico and the Oklahoma panhandle.

By the 1846 Oregon Compromise with Great Britain the United States settled its northwestern boundaries and the territory of the present states of Oregon, Washington, Idaho, northwestern Montana and western Wyoming became part of the public domain.

Following war with Mexico, the Southwest was ceded to the United States by the Treaty of Guadalupe Hidalgo in 1848. The area of California, Nevada, Utah and Arizona (except the Gadsden Purchase), western New Mexico, western Colorado and southwestern Wyoming were added to the public domain. Preexisting grants by Spain and Mexico had resulted in substantial private ownership in the Southwest and in California.

Demands for a southern rail route led to the Gadsden Purchase of 1853 which added the southern part of Arizona and the southwest corner of New Mexico to the public domain.

Although the United States passed up the opportunities to expand into Canada or Mexico at the end of the Civil War, the offer by Russia to sell Alaska proved irresistible, and the purchase was concluded in 1867. This uninhabited territory became the last addition to the public domain lands.

3. Public Land States

The present state of Kentucky was retained by the State of Virginia at the time of the federal cessions and ceded directly to the new state. Tennessee had been ceded to the federal government by North Carolina but since little land remained free of private claims, Congress permitted the new state to dispose of the unappropriated lands. Vermont, claimed by both New York and New Hampshire, was admitted to the Union as the fourteenth state in 1791 without the cession of any lands to the federal government. The States of Maine, carved out of Massachusetts in 1820, and West Virginia, created from Virginia in 1863, involved no public land cessions to the federal government.

The federal government held title to and sovereign jurisdiction over the public domain. There were preexisting private claims within the ceded lands, and great effort, protracted litigation and many private acts of Congress finally resolved the private claims. Indian titles were extinguished by treaty or conquest.

Territorial governments were established, followed by statehood for the public land states. Ohio became the first public land state in 1802, and as additional parts of the public domain were settled a total of thirty new states were created from the public domain.

B. Disposition of the Public Domain

1. Early Land Sales

After the Revolutionary War, the first priority of the new government was to replenish the depleted treasury. One controversial plan, proposed by Alexander Hamilton, was to balance the budget by selling rather than giving away the public domain. This policy was disliked by the Jeffersonians who wanted to promote an ideal agrarian society by easy acquisition of land by poor farmers. Initially the land sales plan won out, and land was sold for \$2 per acre with the minimum sales unit being 640 acres. Because of this sales policy, much of the land was sold to corporations and speculators, rather than to settlers. As a result, many farmers simply went into the wilderness and squatted upon the land. Accommodations had to be made for these land hungry squatters because of their sheer number and their determination not to give up what they had attained. In 1804, the minimum unit of acreage was reduced to 160 acres, and land offices were established near the frontier. In 1812 the General Land Office was created in order to efficiently conduct surveys and sales. In 1830, Congress enacted the Preemption Act which gave squatters the first right to buy the land that they had settled. Later preemption acts confirmed the policy that settlers rather than corporations for profit should be the beneficiaries of the public domain, and laid the groundwork for the Homestead Act.

2. Grants to States

After settlers and farmers, the states received the next highest amount of land from the federal government. The policy for admitting new states to the Union was the "Equal Footing Doctrine." The admission of Ohio in 1803 served as a model for the admission of later states. The federal government granted Ohio 4% of its land area for the benefit of its schools, and 5% of the net proceeds of land sales in the state to provide for a road building fund. Generally, this pattern was followed for later admittees, although there was a slight trend to liberalize the grants, especially for educational purposes.

3. Railroad Grants

To encourage the economic development of the nation, Congress granted railroads over 90,000,000 acres of land to facilitate the laying of new track to the west. Another 35,000,000 to 40,000,000 acres were granted to the states to be used by the railroads. The railroad grants were popular at first, but as the supply of free land dwindled, their unpopularity grew. Railroads were supposed to dispose of their lands within three years to aid homesteaders, but were able to bypass the law by "disposing" of the land by mortgaging it to affiliates.

4. Mining Laws

Miners were governed by the Mining Laws of 1866 and 1872. Under these laws, miners were encouraged to explore for and extract minerals on the public lands. If a mineral deposit was discovered, a fee title could be obtained cheap.

1920 signaled a change in the policy that encouraged unrestricted entry upon the public domain for mineral development. The Mineral Leasing Act withdrew from mineral entry all public domain land that possessed fuel mineral deposits.

5. Homestead Acts

In 1862, the first Homestead Act allowed any citizen twenty-one years of age to acquire 160 acres of surveyed land by paying a small filing fee, making certain improvements, and maintaining his residence on the property for five years. Under this Act, which vindicated the Jeffersonian ideal of free land, almost 1,500,000 homesteaders acquired 248,000,000 acres of land.

However, by 1881, the wave of settlement had passed the 100th meridian and the 160 acre homestead, to a large extent was no longer practical because of the aridity of the lands further west. Attempts were made to rectify the problems caused by the lack of water such as the Desert Land Act which allowed homesteads of 640 acres provided the settler could irrigate it in three years.

The Stockraising Homestead Act of 1916 permitted entry on 640 acres, but even that amount was insufficient to support a viable economic family farm due to the low productivity of the remaining land. The effect of the Stockraising Homestead Act was to

further break up of much of the public domain grazing areas. New settlers on the range intensified the already present competition for what little grass there was, and the result was long-term deterioration of the public domain grazing lands.

C. Retention and Management of the Public Domain

In the mid-19th century a policy of retention of certain types of land and resources grew up at the same time that disposals for settlement and development continued apace. Sometimes characterized as a shift or change in public lands policy, the retention philosophy is more easily understood as a growing recognition of the enormous variety of landform and resource characteristics in the western United States, and a recognition that not all the land and resources were suitable for immediate settlement and exploitation. Many visitors to the west in the mid-19th century were awed by the extent and grandeur of the North American forests and geology, but appalled at the speed with which the forests, prairies and native wildlife habitats were being depleted or irrevocably committed to development.

1. Mineral Reservations

Most of the disposal laws provided for the federal government to retain minerals, but the classification as "mineral" or "non-mineral" proved troublesome on the frontier. The entryman or the local register and receiver made an unscientific determination of mineral character based on surface observations. Enormous mineral wealth passed into private hands inadvertently, and the patentees became the owners of subsequently discovered minerals. Limitations on mineral conveyances, such as the 160 acre restriction in the 1873 Coal Act were evaded through agricultural patents. Beginning in 1906 the President withdrew known coal reserves which were then available only under mineral laws. Legislation in 1909 and 1910 confirmed the congressional intent to separately dispose of coal.

Beginning in 1904 the Secretary of Interior withdrew lands known to be valuable for oil. The Pickett Act of 1910 authorized the President to classify and withdraw lands from agricultural and oil entries but not to prevent entry for location of metallic minerals. The Agricultural Entry Act of 1914 restored agricultural entry rights over certain withdrawn minerals and provided for a patent reservation of certain named minerals.

The Stock Grazing Homestead Act of 1916 permitted entry on lands "the surface of which is . . . chiefly valuable for grazing and raising forage crops" but reserved "all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same." The Act marked the end of the effort to classify lands as agricultural or mineral. The Mineral Leasing Act of 1920 formally established the principle that many public domain mineral resources should be retained in federal ownership and that the federal government

should receive substantial compensation upon disposal.

The progression of federal mineral reservation policies resulted in mixed mineral and surface land ownership patterns, contributing to present day problems associated with access, development or preservation of non-mineral resources.

2. Forest Reservations

The spectacular scenic features of Yellowstone National park were reserved from exploitation in 1872, and additional reservations for forest and scenic purposes, including Sequoia National Park, were made in the subsequent decades. In 1876, illegal logging on the public domain had been recognized by Congress as a growing problem. A Division of Forestry was created in 1881 within the Department of Agriculture. The 1891 General Revision Act authorized the executive to establish forest reserves, withdrawing the lands from other uses. In 1897, Presidents Harrison and Cleveland had withdrawn millions of acres of forest lands in the western States. Prior to the 1907 repeal of the President's authority to establish forest reserves, 195 million acres were set aside.

3. Pickett Act of 1910 and United States vs. the Midwest Oil Co.

The General Withdrawal (Pickett) Act of 1910 served to confirm the President's authority to "temporarily withdraw" public lands until revoked by him or by an Act of Congress and further provided that the withdrawn lands "shall at all times be open for exploration, occupation, and purchase under the mining laws. . . ." The Act did not expressly confirm previous executive withdrawals, but the case of United States v. Midwest Oil Co., 236 U.S. 459 (1914) found that longstanding congressional acquiescence in the practice had the effect of confirming it, except where the executive withdrawal contravened a policy declared by Congress. The infamous 1941 opinion of Attorney General Jackson, 40 Op. Atty. Gen. 73 (1941) read the Pickett Act as dealing with temporary withdrawal authority and not affecting the President's permanent withdrawal authority in which the Congress presumably continued to acquiesce. All implied withdrawal authority was repealed by Section 704(a) of the Federal Land Policy and Management Act of 1976, and the provisions of Section 204 of that Act now govern withdrawals.

4. Permanent Retention

A variety of Acts of Congress have set aside special purpose tracts or authorized their withdrawal including the following:

(a) Indian reservations, which have also been set aside by treaty or executive order. These lands are not part of the public domain and are not subject to disposal under the public land laws.

(b) Naval oil reserves in California, Wyoming and Alaska.

(c) Military reservations carved out of the public domain during the World War II era. These reservations were limited by the Defense Withdrawal Act of 1958 to 5,000 acres without congressional approval.

(d) Public water reserves under the 1916 Stockraising Homestead Act.

(e) Power and reclamation withdrawals.

(f) Naval oil shale reserves in Colorado and Utah.

(g) Fish and wildlife refuges administered by the Fish & Wildlife Service of the Department of Interior.

(h) Wild and Scenic Rivers as designated by Congress are under study.

(i) National parks and monuments. National parks had been created by Acts of Congress; national monuments and historic sites may be created by executive proclamation pursuant to the Antiquities Act of 1906.

(j) Wilderness preservation system including components of the National Forest System, National Park System, Wildlife Refuge System.

5. Taylor Grazing Act

Unrestricted grazing on the federal lands fostered by the liberal homesteading acts coupled with low livestock prices eventually led to a federal administration effort. The Taylor Grazing Act of 1934, although ostensibly adopted to protect the federal lands "pending its final disposal" effectively removed the balance of the public domain from continued widespread disposals. Only those lands found by the Secretary of Interior to be more valuable for raising agricultural crops than for native grasses were available for homesteading. Isolated tracts outside the established grazing districts were sold or leased to contiguous owners. The TGA withdrawals effectively removed the remainder of the public domain from entry and disposal. Section 8 of the Act authorized exchanges with states and private parties to improve management of the public lands, but the authority for further public land sales was drastically limited. The Taylor Grazing Act made retention and management the primary policy on the remaining public lands.

6. 1946-1964 Policy Controversies

Merger of the Federal Grazing Service and the General Land Office in 1946 to create the Bureau of Land Management acknowledged the status quo and the need for a federal caretaker agency for the public lands.

The policy of retention and management was in part a reaction to increasingly liberal disposal laws in the 19th century which did not provide for protection of lands with special values or retention of lands which would serve public purposes. The conservation ethic grew up as a balance to the utilitarian philosophy of the early American west. Conservation/preservation philosophies advocated the more careful use of natural resources and a retention in public ownership of identified public values. But the co-existing philosophies of utilitarianism and conservationism continue today as the main forces shaping federal public land tenure policy.

In 1945 the Grazing Service came under attack by its permittee clientele, and its appropriations were cut severely. Its staff was reduced by two thirds and the attempts at range improvement instituted under the Taylor Grazing Act almost ceased. At the same time the National Wool Growers Association and the American National Livestock Association sought transfer of the remaining public lands to private or state ownership. A Senate bill introduced in 1946 would have conveyed to the states all the unappropriated and unreserved lands, all lands withdrawn for coal, oil, gas, phosphate, potash or other minerals, and all lands within the grazing districts. Some advocated that the public lands (as well as National Forest grazing lands) be sold within fifteen years to the permittees on easy terms, and the unsold lands be turned over to the states. Westerners argued that retention of the public lands in federal ownership resulted in a small tax base, subjected western economic interests to bureaucratic or national political controls, and that the resources would be better managed by the states whose officials were more attuned to local needs. Countering this movement were the serious reservations of some states that the federal public lands simply were not worth having, and that it was unlikely that the lands would pay for themselves in private ownership.

The period 1948-1956 saw a large number of land sales, although mainly in small tracts. Gates calculated that during these years the number of sales increased from 350 to 6,041 and the acreage sold from 33,592 to 197,874. A large number of small tracts were sold to city dwellers seeking rural retreats. Transfers to states, counties and municipalities for recreation and public purposes, originally authorized in 1926, continued as the post-war economic expansion gained momentum.

The debate about disposal or retention of the public lands culminated in the creation of the Public Land Law Review Commission by Public Law 88-606, September 19, 1964. The congressional declaration of policy in establishing the commission was "that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." At the same time that the Commission was created, Public Law 88-608 was enacted to give temporary authority to dispose of

lands determined to be required for orderly growth and development of a community or which were chiefly valuable for residential, commercial, agricultural (other than grazing and forage), industrial or public uses or development. Sales to qualified governmental agencies were to be at appraised fair market value or to individuals through competitive bidding at not less than fair market value. Local zoning authorities were to have the opportunity to regulate the lands for sale, and all minerals were to be reserved. The sale authority was to expire June 30, 1969, along with the temporary classification authority of P.L. 88-607, the Classification and Multiple Use Act.

Other disposal authorities, such as the Homestead laws and the Recreation and Public Purposes Act of 1926 (as amended from time to time) continued in effect and were used where appropriate. Congress continued to legislate for particular disposals or exchanges where general authority was lacking or special problems were perceived.

7. Public Land Law Review Commission

The PLLRC in its 1970 report One-Third of the Nation's Land made many recommendations which were subsequently incorporated in the Federal Land Policy and Management Act of 1976; other recommendations were rejected or modified. Among the PLLRC recommendations were the discontinuance of large-scale disposal of the public lands and retention of the public lands in federal ownership (Recommendation A), establishing statutory goals and objectives for land use planning leading to retention and disposal decisions (Recommendation F), continued transfers to state and local governments (Recommendation N), study and classification for transfer from federal ownership (Recommendation 3) and general use of a land planning process which would include public participation, coordination with other federal agencies and with state and local governments (Recommendations 11, 12 and 13).

The Commission also set out a series of detailed recommendations addressing the propriety of disposal of certain resource lands, most of which recommendations were not incorporated in FLPMA. These recommendations included offering public grazing lands for sale to permittees (Recommendation 42), identifying watershed protection as a reason for retaining lands in federal ownership (Recommendation 58), sale of public lands for agricultural purposes in response to market demands (Recommendation 69), granting a preference right to permittees to purchase public lands (Recommendation 94), and allowing adverse possession to run against the United States on public lands occupied in good faith (Recommendation 113).

Additional PLLRC recommendations were incorporated into FLPMA. State and local government participation in determining which public lands should be sold became law (Recommendation 70; FLPMA §§ 202(c)(9), 203(a)(3) and 210). Public lands are available for expansion of existing communities and for development of new cities (Recommendation 97; FLPMA §§ 203(a)(3) and

212). Acquisition of private lands for federal programs was limited to lands "consistent with the mission of the department involved" (Recommendations 87, 119 and 124; FLPMA §§ 102(a)(10) and 205(b)).

II. Federal Land Policy and Management Act of 1976

A. Section 102 Policies

The FLPMA repealed many laws relating to disposals (§§ 702 and 703) and set out a general retention policy accompanied by very narrow authority for disposals. Section 102(a)(1) declared that the policy of the United States now is:

"The public lands be retained in federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest; . . ."

Section 102(a) further stated that it is the policy of Congress to:

". . .requir[e] each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved. . . ."

B. Section 203 Sales

Section 203(a) of the Act provides:

"A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary [of the Interior] determines that the sale of such tract meets the following disposal criteria:

- (1) Such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or
- (2) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or
- (3) Disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership."

Section 203 goes on to provide that lands with agricultural value which are desert in character may be conveyed under FLPMA for the Desert Land Act of 1877 which was not repealed. Congress required that tracts of the public lands in excess of 2,500 acres may be sold only after submission for congressional review.

1. Sale Tract Criteria, Section 203(a).

Section 203(a) contains several qualifications for any proposed public land sale, many of which seem to be ignored by BLM and none of which have been litigated. Few parcel sales have taken place under the Act, and thus far BLM sales have engendered little interest or controversy, despite the alarm created by President Reagan's so-called Asset Management Program (Executive Order 12348, discussed hereafter). Sales criteria include the following:

(a) Tract-by-tract analysis.

"A tract" or "a particular parcel" may be the subject of sale (§ 203(a) and § 102(a)(1)), but effective land use planning usually requires an overview of land ownership patterns and a decision to retain or dispose of all lands within an area or zone. Many of the Resource Management Plans being prepared by BLM adopt a disposal zone or area classification approach to the land tenure problem (Glenwood Springs, Colorado and Billings, Montana are examples), and little attempt is made during the course of the § 202 land use planning process to fully evaluate individual tracts or parcels (the Northeast Resource Area of Colorado appears to be an exception). Backup information available in resource area and district offices of BLM is not generally included in and published as part of the Resource Management Plan. Environmental assessments and analyses of the particular tracts or parcels are conducted only when a later decision is made to offer a particular tract or parcel for sale.

Does this comply with § 203(a) which requires that the tract be offered "as a result of land use planning required under section 202 of this Act"? Protests to Resource Management Plans are attacking the land use plans as inadequate for failure to address specific sites in detail at the general planning stage.

(b) Land use planning

It would appear that the area-wide Resource Management Plans (RMPs) now being produced must be subjected to an amendment process with an opportunity for public participation on the issue of disposal of each particular tract or parcel before it is offered for sale. This seems too complicated and cumbersome a process to sell off a small isolated tract, but the question of the land use planning procedure to be followed before sale will likely be litigated. BLM land sale regulations contain only the general statement that "Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or

approved in accordance with subpart 1601 of this title." 43 C.F.R. § 2711.1-1(a). BLM planning regulations declare that amendments to a Resource Management Plan shall be made through an environmental assessment or EIS with public involvement, inter-agency coordination and "consistency" (with state and local land use plans) determinations. 43 C.F.R. § 1610.5-5. And present regulations, 43 C.F.R. § 1610.8(b)(2), state that "a land disposal action may be considered before a resource management plan is scheduled for preparation through a planning analysis using the process described in § 1610.5-5 (the amendment procedure) of this title for amending a plan." In view of the requirement in Section 203(a) of FLPMA that sales occur only "as a result of land use planning required under section 202 of this Act" it seems likely that sales made prior to completion of full Resource Management Plan may be challenged.

Present BLM practice is to use older Management Framework Plans (MFPs) as a basis for land sales where no RMP is underway. Some MFPs included public participation and superficially meet the requirements of Section 202 of FLPMA, but many Management Framework Plans will not sustain this scrutiny, when applied, and are not sufficient to sustain FLPMA Section 203 sales. Attempts at amendment in accordance with the present planning regulations are not likely to overcome major shortfalls in the earlier land use planning processes when measured against FLPMA Section 202(c) planning standards.

(c) "Difficult and Uneconomic to Manage", Section 203(a)(1).

The first substantive FLPMA disposal criterion, tracts which due to location or other characteristics are difficult and uneconomic to manage as part of the public lands or are not suitable for management by another Federal department or agency, seems to be the most often applied category. Area and district managers interpret this criteria in a variety of ways, reflecting their own views of what tracts are "difficult" and "uneconomic." Although the section says "difficult and uneconomic" to manage, some planners read this as either/or (see Appendix I, Wells, Nevada). Opinions differ as to what it takes "to manage" tracts of the public lands. Some local administrators feel that "management" is neither difficult nor uneconomic as long as the tract can be ignored and no problems are brought to their attention; others would deem a tract difficult and uneconomic to manage simply by virtue of its isolation and their inability to integrate it into a range improvement or other program.

In general, tracts of relatively small size and not contiguous to other federal lands are being classified for disposal under this first substantive criterion. The language of this first criterion suggests broad latitude and discretion in the local manager, with a determination based on his own opinion about difficulty and lack of economic return in his management of the public land resources. The question posed is whether a tract can be effectively managed as part of the public lands, an answer peculiarly within the professional land manager.

(d) "No longer required for . . . Federal purpose(s)",
Section 203(a)(2).

This extremely narrow substantive disposal criterion, applicable only to a tract acquired for a specific purpose and no longer required for the original or any other Federal purpose, will not often be applied. A review of the first dozen Resource Management Plans has uncovered no instance where this criterion was explicitly used as justification for disposal classification. Most tracts described by this criterion would as well fit the "difficult and uneconomic to manage" category.

(e) Tracts which "will serve important public objectives,"
Section 203(a)(3).

Here Congress addressed the needs of the States, local governments, and businesses impacted by adjacent or nearby Federal public lands. To some extent this criterion is duplicative of the authorities to sell found in the Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869-4). The R&PP Act provides for transfer of Federal lands for public purposes, often at a significant discount to reflect the public benefit to be achieved from the proposed use. The FLPMA § 203(a)(3) authority extends the R&PP purposes and is broad enough to allow disposal for a great variety of community and economic development ends. The provision is clearly meant to accommodate communities and businesses which are impacted by Federal public land ownership since one of the qualifications on any such disposal is that the public objectives "cannot be achieved prudently or feasibly on land other than public land." In theory an applicant for purchase of a public land tract under this criterion must demonstrate that private lands in the area are unsuitable or unavailable for the proposed development. If the applicant has eminent domain powers for the proposed development, the presence of suitable private land though not offered for sale, may disqualify the purchase proposal. Additionally, the section adds an additional qualification requiring that the public objectives to be achieved "outweigh other public objectives and values . . . served by maintaining such tract in Federal ownership." In most cases this weighing of public objectives will be an apples-and-oranges comparison, and BLM will have considerable latitude to elect to retain tracts in accordance with its perception of its own best interest.

(f) General observations on sale tract identification.

Although BLM is proceeding to make land tenure determinations in the course of preparing Resource Management Plans, the current regulations governing sales, § 43 C.F.R. subpart 2710, deal mainly with procedural aspects of sales under the § 203 authority, and say very little about substantive criteria for making retention and disposal decisions. Earlier and outdated regulations found at 43 CFR part 2410 adopted prior to FLPMA are brief and contain little specific guidance.

Although the land use planning regulations require the development within each Resource Management Plan of planning criteria based upon applicable law (FLPMA), Director and State Director guidance, and the results of public participation and coordination with other Federal agencies, state and local governments and Indian tribes, in practice each local manager has latitude to develop and propose planning criteria to fit his own management situation and his own notions of what is required. Although the planning criteria proposed for each Resource Management Plan are available for public comment prior to use in the planning process, little meaningful comment has been received by BLM at this stage of the planning process relative to land tenure policy and decisions.

Appendices E, F and I represent area manager efforts to formulate land tenure criteria. Appendix G is a State office guidance memorandum attempting a comprehensive analysis of retention and disposal considerations. The variety, lack of standardization, and departures from Section 203 language are readily apparent and appear to invite protest and, perhaps, judicial review.

2. Sales Price, Section 203(d)

(a) "Not less than fair market value"

§ 203(d) requires that sales of public lands shall be "at a price not less than fair market value." Discounted prices is not permitted under FLPMA, but reduced-price transfers of Federal lands for enumerated purposes where a public benefit is recognized are available under the Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869-4) and the Federal Property and Administrative Services Act of 1949 (63 Stat. 385; 40 U.S.C. 484). Under these acts Federal real property can be made available at a discount or free for hospitals, schools, parks, recreational facilities and historic monuments.

(b) Uniform Appraisal Standards

To determine fair market value for FLPMA sales, BLM conducts an appraisal in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions promulgated by the Interagency Land Acquisition Conference, 1973 edition. The Uniform Appraisal Standards, developed primarily by the Department of Justice from Federal eminent domain law, ordinarily result in relatively conservative valuations since they embody legal maxims tending to favor the United States when it acquires private lands for public purposes. However, bureaucracies being what they are, BLM appraisers tend to use the highest comparable sales to establish the minimum bid price for § 203 sales. BLM is thus not subjected to criticism that it is "giving away" the public lands. This phenomenon, coupled with a generally slow real estate market, has resulted in a disappointing track record for BLM sales efforts, with many offered tracts remaining unsold.

(c) Payment

No installment purchase terms are offered by BLM. Earnest money equal to 20% of the bid price must accompany every bid, with the balance due in full within 30 days of acceptance of the winning bid.

To meet purchaser objections to the 30 day closing period between sale approval and payment of the full price, BLM has proposed to amend 43 C.F.R. § 2711.3c to require payment within 180 days of the sale date rather than within 30 days. Amended regulations also permit flexibility in setting the amount of the earnest money deposit to accompany bids which may now be fixed at not less than 10% or more than 30%. (43 C.F.R. § 2711.1b). These changes are designed to make public land sales slightly more competitive and consistent with commercial practices. Nevertheless, no seller financing comparable to what is regularly found in the present real estate market is available from the United States. Clearly, BLM should make greater efforts to seek authority for a federal lending program to facilitate public land sales.

3. Method of Sale

Section 203(f) establishes competitive bidding as the primary sale method. The Secretary has the discretion, however, to sell lands with modified competitive bidding where he determines it "necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or policies, including, but not limited to, a preference to users" "Equitable distribution," "equitable considerations" and the public policies to be considered are not specified, and the Secretary has great latitude to modify bidding procedures on individual tracts.

(a) Direct sales

BLM has offered about one-fourth of all sale parcels for modified competitive bidding or direct sale to a designated purchaser. Isolated tracts with no access completely within a single private ownership are usually offered to the surrounding owner at the appraised price. Nevertheless, direct sales are noticed in the Federal Register and advertised like other sales, and the direct purchaser must make a written offer on the appointed sale date. Obviously landowners adjoining BLM lands which they wish to acquire will seek to convince the local land manager to offer the land for direct sale. The proposed rule amendments would limit direct sale to tracts which are completely surrounded and have no public access, tracts needed by State or local governments or nonprofit organizations or "where necessary to protect existing equities." The last phrase is sufficiently broad to permit innovative justifications for direct sales. Since direct sale is for the appraised value (the minimum price allowed by FLPMA) it will be the motivated buyer's preferred method.

FLPMA contains broad language establishing even more discretion in BLM when "public policies" are recognized. Section 203(f) states that the Secretary "shall give consideration to" (1) the state, (2) local government, (3) adjoining landowners, (4) individuals and (5) "any other person" who may be a potential purchaser. There is no express statement that this listing is intended to establish a hierarchy of preferences among potential purchasers but there is a clear implication that "public policies" are likely to favor States, local governments and adjoining owners. Likewise there is no indication as to the nature of the "consideration" to be given. The provision may justify almost any preference scheme provided there is some minimal rationale for it.

(b) Modified competitive bidding

Again, to assure "equitable distribution" or to "recognize equitable considerations or public policies" a modified competitive bidding procedure may be followed by BLM. Designated bidders may receive a right to meet the highest bid; the persons permitted to bid may be limited; or a first right of refusal to purchase at fair market value may be offered. Among the considerations enumerated by the regulations are needs of State and local governments, adjoining landowners, historical users and "other needs for the tract." Once again, a motivated buyer will attempt to concoct a modified bidding system which will guarantee his success. Careful attention must be given to how the modified system is described in the Notice of Realty Action to create the maximum security for your buyer-client. Should two or more designated preference holders be identified, the proposed amended regulations sanction offering them "the opportunity to agree upon a division of the lands among themselves" -- a clear invitation (and perhaps sanction) to collusion.

(c) Competitive bidding

The general method of sale, though undesirable from the perspective of the motivated buyer, is open competitive bidding. Sealed bids must be tendered at the place of sale prior to the hour fixed by the Notice of Realty Action, and must be accompanied by certified check, money order, bank draft or cashier's check for the earnest money. The proposed regulations would eliminate drawings to break ties and would permit the high bidders to submit supplemental bids. Additional oral bids may be received if provided in the Notice of Realty Action. The highest qualifying bid, sealed or oral, wins and the successful bidder must increase his earnest money if the bidding ran higher than his original tender.

(d) Over-the-counter sales

Unsold parcels may be offered "over-the-counter" if that is provided for in the Notice of Realty Action. Some broker contract sales are contemplated by the proposed amended regulations, with the details to be set out in the Notice of Realty Action. Brokered sales are not described in detail, and this amendment appears to be more a gesture to the real estate fraternity than a serious alternative.

If a designated direct sale purchaser fails to purchase (as has happened recently in several sale efforts) or if modified or straight competitive bidding elicits no offers (which must be at least the appraised value) the tract may continue to be offered for any period of time specified in the Notice of Realty Action. The first bid for not less than the appraised value or the highest bid received within a specified time could be accepted, as set out in the Notice. BLM instructions, however, require that the appraisal determining fair market value be not less than six months old, and this may necessitate periodic reappraisal and the issuance of a new notice. Many notices which have been issued recently have failed to provide for a continued offering, or for the use of an alternative method of sale in the absence of a purchaser at the specified sale date. Area managers are learning from this recent experience, and are becoming more sophisticated about specifying their sale options in the original Notice of Realty Action.

4. Sale Preparation

In practice the identification, preparation and offering for sale of tracts of the public lands is a time consuming and involved process. Sales follow roughly the following course:

(a) Identification of sale parcels through land use planning. Only when the land use plan has been "prepared and/or approved" may a tract of the public lands be offered for sale.

(b) Environmental assessment. Despite the directive of § 203(a) that sales be "a result of land use planning required under § 202" of FLPMA, the Resource Management Plans now being prepared clearly do not, in most cases, address the environmental impacts of disposal of the individual parcels. Generally no attempt has been made to evaluate individual tracts, such as identification of threatened and endangered species habitat, the presence of cultural resources or minerals, or a myriad of other matters. The practice is to conduct an environmental assessment, often in an abbreviated checklist format, before offering a tract for sale.

(c) Survey. Unsurveyed public lands cannot be sold, and a survey must be completed and approved prior to sale.

(d) Appraisal. Fair market value must be determined by a federal or independent appraiser in accordance with the principles of the Uniform Appraisal Standards for Federal Land Acquisitions. Authorized improvements not owned by the United States are not included in the determination of fair market value. Each appraisal must be submitted for technical review and approval. A proposed amendment, presumably designed to let the agency tailor the scope of the appraisal to the particular tract (some appraisals may cost more than the fair market value of the tract involved) states that "the method for each appraisal shall be determined . . . after consideration of the complexity of the case, the proposed method of sale and other factors pertinent to assuring a fair market value determination."

(e) Reservations.

Public lands are sold subject to reservation to the United States of all minerals together with the right to prospect for, mine, and remove the minerals, as required by Section 209(a). However, Section 209(b) does let BLM convey mineral interests where there are no mineral values or where the reservation would interfere with or preclude appropriate non-mineral development of the land. In addition, Section 208 authorizes the Secretary to include other terms, covenants or conditions "to insure proper land use and protection of the public interest."

(f) Unpatented mining claims.

A review of BLM mining claim records determines whether there are unpatented mining claims encumbering the proposed sale parcels. Since the enactment of FLPMA owners of unpatented lode and placer mining claims have been required to file with BLM copies of location certificates, assessment work affidavits or notice of intent to hold the claim. FLPMA Section 314. Failure to file is deemed conclusively to be abandonment of the claim.

If unpatented mining claims exist, BLM must obtain a relinquishment or institute a contest. The mere existence of an unpatented claim generally disqualifies a tract from further consideration for sale since BLM lacks staff to pursue surrender or contest of claims except in cases of extreme urgency. Owners of valid unpatented mining claims have a vested right which includes the right of possession for mining purposes.

BLM policy is to not contest mining claims merely to prepare a tract for sale to a new private owner. And prospective purchasers lack the title or interest necessary to institute a private contest. I.M. 82-359 (April 2, 1982); 43 C.F.R. § 4.450-1 (1982).

(g) Grazing permit termination. Section 402 provides for two years prior notice before cancellation of a permit or a lease and payment of compensation for the adjusted value of the permittee's interest in permanent improvements treated. This notice requirement and the negotiations over the amount of the termination payment may delay disposal for years, and sometimes result in threats of litigation until the permittee is satisfied. Some permittees use their Section 402 rights to bargain for a purchase preference. Other outstanding permits, other than for grazing, may also encumber the disposal tract and must be terminated in accordance with their terms.

(h) State and local zoning. Section 210 requires 60 days advance notice to the Governor of the State and to the head of the local zoning or land use regulatory authority to afford them the opportunity to zone or otherwise regulate or change or amend existing zoning or other regulations prior to any conveyance. As a practical matter, any action by the local zoning or land use regulatory authorities may dramatically affect the fair market value of any tract, and this step must be taken much earlier than the 60 days specified by Section 210.

(i) Notice of Realty Action. The notice must describe the property, set forth the terms, covenants, conditions and reservations to be included in the conveyance document, and describe the method of sale. It sets out the time, place, earnest money requirement (ranging from 30% for tracts valued at \$10,000 or less to 10% for tracts over \$100,000) and the minimum price. The notice is published in the Federal Register and once a week for three weeks in a newspaper of general circulation in the vicinity of the lands offered for sale. The notice is sent to the appropriate member of Congress and the U.S. Senators, the Governor of the State, the head of any political subdivision having zoning or other land use regulatory responsibility in the geographic area and to heads of political subdivisions having administrative or public services responsibility. The identification of all the political subdivisions with these authorities could be a tricky business. In addition, the notice is to be sent to "other known interested parties of record including, but not limited to, adjoining land owners and current or past land users." Again, identification of these persons may prove difficult. The notice may segregate the lands from appropriation under the public laws, including the mining laws, for up to 270 days.

(j) Withdrawal termination. Any withdrawal of record must be terminated. Certain types of withdrawals will preclude disposal of lands otherwise eligible for sale.

(k) Congressional review. Section 203(c) requires submission for congressional review of any sale in excess of 2,500 acres. After 90 days the sale may be consummated if neither house has adopted a concurrent resolution disapproving the sale designation. The 90 day computation excludes days upon which either the House or Senate has adjourned for more than three consecutive days.

(l) Acceptance or rejection of offer. Offers must be accepted within 30 days after receipt or, in the case of tracts in excess of 2,500 acres, within 30 days after expiration of the 90 day congressional review period. In practice the purchaser may be required to waive his right to a decision within the 30 day period. The offer may be refused or the lands withdrawn from sale at any time prior to acceptance if BLM "determines that consummation of the sale would not be consistent with this Act or other applicable law." The regulations mention collusion, activities that refrain free and open bidding and speculation as grounds for refusing an offer or for withdrawing the tract from sale. The offeror has not contractual rights against the United States until acceptance of the offer and payment of the purchase price.

(m) Payment. The amended regulations will require that the balance of the purchase price must be paid within 80 days from the date of the sale, rather than within 30 days. If not paid, the sale is cancelled and the furnished money deposit forfeited. No installment sale terms are offered by BLM.

(n) Patent issuance. Patent preparation and issuance is governed by 43 C.F.R. subpart 1862. There is no guarantee that the patent will be available for delivery by the time payment of the purchase price is due, although most State Offices now process patent applications expeditiously and without undue delay. Any technicality overlooked by the local administrator preparing the tract for sale can result in a patent issuance problem. The details of patent processing are not set out in the regulations, and the BLM Manual provisions are seriously out of date.

C. Section 206 Exchanges

FLPMA § 206(a), Exchanges, applies to National Forest System lands as well as public lands administered by BLM. Likewise the same-state limitations, unsurveyed school sections and 25% cash equalization provisions of Section 206(b) are applicable to Forest Service exchanges conducted under the General Exchange Act of 1922, as amended.

The principal provisions governing exchanges are found in § 206(a):

"A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: Provided, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." (Emphasis added.)

Although an exchange necessarily involves both a disposal of Federal lands (termination of Federal jurisdiction and loss of all resource uses, as in a sale) and an acquisition of non-Federal lands (limited to tracts "consistent with the mission of the department involved" under FLPMA Sections 102(a)(10) and 205), Section 206 appears to have a more liberal standard for both disposal under section (§ 203) or acquisition under section (§ 205) of FLPMA. The broad decisional criterion for approving an exchange is that "the public interest will be well served by making that exchange."

The gloss on the term "public interest" allows consideration of a much broader range of concerns than either the sale or acquisition sections separately or in combination. The exchange criteria give both BLM and the Forest Service great discretion

and flexibility in making land ownership adjustments, but in practice the varied considerations are often difficult to balance and adjust. Land exchanges typically take many years to complete, involve extensive consultation with affected local governments, neighbors, and other groups, and frequently require repeated adjustment and compromise.

1. Exchange Criteria

A separate listing of the § 206(a) considerations may be helpful in comprehending the difficulty experienced in carrying out land exchanges:

Public Interest includes:

Better federal land management, and

Needs of State and local people for:

- (a) The economy
- (b) Community expansion
- (c) Recreation areas
- (d) Food
- (e) Fiber
- (f) Minerals
- (g) Fish and wildlife, plus

Values and objectives served by present Federal lands are not more than values of the non-Federal lands to be acquired.

The first consideration, better Federal land management, is easily addressed by BLM or the Forest Service; the agency generally has good reasons for wanting to dispose of the selected lands and has equally good, though different, reasons to acquire the offered lands. The problems arise in assessing and weighing "the needs of State and local people" who are affected by an exchange. The concerns listed in § 206(a) are various and frequently conflicting.

Examples of conflict are readily pointed out. The exchange proponent who seeks to acquire the selected Federal land probably wants it for development uses such as community expansion or production of minerals. But the presently undeveloped Federal selected land already serves public objectives of preserving open space or providing recreation and fish and wildlife habitat. An exchange invariably means a dramatic change in the character of the Federal selected land. Usually local land use planning has given no consideration to the possibility that Federal lands will become private and will be developed, and frequently there is no local zoning designation and no provision for public services. Frequently there is no state law procedure by which a proposed private development on present Federally owned land can be submitted to the local planning jurisdiction for comprehensive review and approval prior to disposal from Federal ownership.

The so-called consistency requirements of FLPMA § 202(c)(9), do not apply to land exchanges. The coordination required by § 210, which includes 60 days advance notification to the Governor and political subdivisions having zoning or other land use regulatory jurisdiction allows only a short period in which to regulate or change or amend existing zoning of the lands to be disposed of, but this is simply an opportunity for the State and local governments to react to BLM decisions. Section 210 does not contain any mandate that BLM conform its actions in exchanges to the preferences or plans of State or local governments. Nevertheless, local governments are frequently outspoken about their reservations about or objections to proposed land exchanges.

On the other side of the land exchange, the private offered lands to be acquired by the Federal agency are probably already serving open space needs and will remain in an undeveloped state for public recreational needs or to provide fish and wildlife habitat. Generally the status quo will be retained on these lands, but the uses of the selected Federal lands going into private ownership will change dramatically. Thus, the probable result of any proposed land exchange will be a net loss of values favored by a significant (and vocal) segment of the population.

2. Lands or interests in lands.

Section 206(b) authorizes the Secretary of Interior (but not the Secretary of Agriculture) to accept non-Federal lands or interests therein in exchange for Federal land or interests therein. Fee title, conservation easements, surface only, minerals only, rights of way and water rights may all be exchanged. Present BLM policy is to not exchange Federal minerals for non-Federal surface only if minerals will remain in non-Federal ownership. Forest Service policy is to exchange for interests in land also but there is no express authority in FLPMA or the General Exchange Act.

3. Same-State limitation.

The Federal lands conveyed out must be in the same State as the non-Federal land received. This keeps the property tax and other impacts of the land ownership change within the same State although not necessarily within the same local political jurisdiction. In practice proximity of the select (Federal) and offered (non-Federal) lands is desirable to avoid complaints that one jurisdiction is losing taxable lands into Federal ownership while another is gaining tax base. Pre-FLPMA exchange authority allowed multi-state transactions if the offered and select lands were within 50 miles distance.

4. Unsurveyed school sections.

Unsurveyed lands which would become part of grants to the States for school purposes upon survey are deemed non-Federal lands even though patent has not issued to a State. Therefore a State may offer these sections in a FLPMA-based exchange.

5. Equal value requirement.

Section 206(b) states that:

"the value of lands exchanged . . . either shall be equal, or if they are not equal, the value shall be equalized by the payment of money . . . not to exceed 25 percentum of the total value of the lands or interests transferred out of Federal ownership."

Although the cash equalization rule is easy to apply, great difficulties are experienced in reaching agreement on values of the offered and select lands. The Uniform Appraisal Standards for Federal Land Acquisitions, 1973 edition, guides appraisers, but that document, as explained above in connection with § 203 sales, embodies eminent domain litigation rules and severely limits the marketplace give-and-take that usually accompanies private real estate transactions. To complicate matters, most BLM appraisers seem more concerned about job tenure than land tenure, and usually they appraise Federal lands high and private lands low. Resort to a well-qualified outside appraiser and negotiation with the BLM State Office review appraiser, bypassing the district or area appraiser, is often necessary.

As a practical matter BLM does not have funds available for cash equalization and the exchange proponent must be prepared to contribute the cash equalization money. If the offered lands values exceed the select land values, the proponent will be in the position of having to delete offered lands, increase the select land to be received, or make a donation to BLM.

6. Inter-agency transfers.

Lands acquired by exchange which are within the National Forest System may be transferred by BLM, but there is no authority for transfers out of NFS status to BLM except by separate Act of Congress. BLM may also transfer acquired lands to other agencies for inclusion in the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or other Systems established by Congress.

May BLM acquire lands for the benefit of agencies or branches of the Federal government outside the Department of the Interior? The question has arisen in connection with the acquisition by exchange of State-owned lands within the White Sands Missile Range and the Fort Carson, Colorado military base expansion area. In both cases the States sought to acquire BLM lands or mineral interests instead of receiving cash from the Department of Defense. In September 1982 the Interior Solicitor advised the Department of Justice that so-called military-benefitting exchanges required specific Congressional authority and could not be done under FLPMA because Section 205 requires that acquisitions shall be consistent with the mission of the department involved. Subsequently in April 1983 the Solicitor revised his advice, distinguishing Section 205(b) acquisition limitations from

Section 206 exchanges which contain no such explicit language. Both memoes failed to discuss Section 102(a)(10) which declares that it is the policy of the United States " . . . [to require] each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved. . . ."

BLM Section 206 land exchanges are not subject to automatic Congressional review as are Section 203 sales of over 2,500 acres.

7. Mineral exchanges.

Section 209(a) creates an exception for land exchanges to the general policy of reservation of all minerals by the United States. Although BLM may not sell coal and other minerals under Section 203, it may dispose of minerals by exchange. Fee coal exchanges authorized by the Surface Mining Control and Reclamation Act, 30 U.S.C. 1260(b)(5) are processed under FLPMA Section 206. Coal exchanges have been employed by railroad affiliates to block up logical mining units where Federal leases were prohibited by Section 2(c) of the Mineral Leasing Act, and Federal coal has been acquired in exchange for National Park inholdings. Lands needed for support of metalliferous mining operations and not available within the constraints of the 1872 Mining Law have been acquired by exchange. Exchanges to relocate mineral development from environmentally sensitive lands to more suitable areas can be accomplished.

Mineral exchanges may become more common as resource developers and BLM seek to resolve inter-twined ownership in the checkerboard, but the technique will remain controversial; it is fair to say that most recent mineral exchange proposals are being litigated.

The General Accounting office has been critical of proposed exchanges for Federal coal, particularly with respect to the equal value determinations.

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APPENDICES

- A. Land Use Planning, 43 CFR Part 1600
- B. Sale Regulations, 43 CFR Part 2700
- C. Sale Regulation Proposed Amendments,
48 F.R. 54656, December 6, 1983
- D. Exchange Regulations, 43 CFR Part 2200
- E. Glenwood Springs, Colorado, Final Resource
Management Plan Appendix G: Considerations
Used in Determining Land Tenure Adjustments
- F. Billings, Montana, Draft Resource Management
Plan Appendix 1.3: Land Tenure Adjustment
Planning Criteria
- G. Billings, Montana, Final Resource Management
Plan Appendix 1.6: State Director Guidance
Land Pattern Review Criteria
- H. Protest of Northern Plains Resource Council to
Billings, Montana, Final Resource Management
Plan (see pages 9-10 for land tenure)
- I. Wells, Nevada, Final Resource Management Plan
Criteria, Proposed Land Tenure Plan and Map.
(Final plan proposes disposal of 90,000 acres
mostly by public sale)
- J. Protest of Natural Resources Defense Council,
Inc., to Wells, Nevada, Final RMP. (See page
7 for land tenure)
- K. BLM Fee Exchange Policies, September 26, 1983
- L. S.170, Colorado General Assembly 1981, State
Claim to Federal Public Domain
- M. Executive Order 12348, Asset Management Program,
February 25, 1982
- N. Wall Street Journal, December 15, 1982
- O. Instruction Memoranda Nos. 83-203 and 83-204,
Asset Management Program, December 29, 1982

APPENDICES, continued

- P. S.891, 98th Cong. 1st Sess., the "Federal Land Retention Act of 1983"
- Q. July 25, 1983, Interior Press Release with Harper July 7, 1983, and Watt July 18, 1983, letters attached
- R. Washington Post, October 11, 1983
- S. Information Memorandum No. 84-12, FY 1983
Public Land Sale Results, October 17, 1983

APPENDIX A

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(Circular No. 2524)

43 CFR Part 1600

Planning, Programming, Budgeting; Amendments to the Planning Regulations; Elimination of Unneeded Provisions

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking enhances and clarifies the planning process and eliminates burdensome, outdated and unneeded provisions in the existing planning regulations. The decision as to which provisions should be eliminated or clarified was arrived at after review of public comments received in response to a request by the Secretary of the Interior, review of the existing regulations by Bureau of Land Management personnel and consideration of comments submitted in response to the proposed rulemaking. The final rulemaking also renumbers the sections of the existing regulations. The effective date of the final rulemaking is 60 days from the date of publication in the Federal Register. This will provide the public with an opportunity to identify any comments that they feel have not been addressed by the Department of the Interior in this final rulemaking, as well as any significant concerns they might have with the final rulemaking.

EFFECTIVE DATE: July 5, 1963. Comments should be submitted by June 6, 1963. Any comments postmarked or received after the above date may not be considered.

ADDRESS: Any suggestions, inquiries or comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David C. Williams, (202) 653-8642.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the Federal Register on November 23, 1961 (46 FR 57448). Comments were invited for 60 days ending on January 22, 1962. Comments were received from 304 different sources, 65 from conservation, civic, industry, and other associations, 23 from State governments, 22 from companies, 20 from various Federal

agencies, 3 from local government associations and 171 from individuals. In general, the comments were favorable to the planning system used by the Bureau of Land Management. Many of the proposed changes were favorably received, but the majority of unfavorable comments protested proposed changes in the public participation provisions of the existing regulations. While the final rulemaking adopts many of the changes made by the proposed rulemaking in the area of public participation, the final rulemaking has been amended to assure meaningful public participation in keeping with the strong support in the Department of the Interior and the Bureau of Land Management for public participation in the planning process. The specific changes made in the public participation section and other provisions of the final rulemaking will be discussed later in the preamble as part of the discussion on those specific sections. Other specific comments will be discussed in connection with the sections they concern.

Section 1601.0-1 Purpose.

The few comments on this section interpreted the language of the proposed rulemaking as indicating that the Bureau of Land Management was going to continue to rely on existing plans for an indefinite period rather than preparing resource management plans. The Bureau of Land Management intends to use plans that were in existence prior to the passage of the Federal Land Policy and Management Act of 1976, if they comply with standards established in these regulations and provide an adequate basis for resource management decisions, but intends to use them only until time and funds permit completion of resource management plans. Therefore, the final rulemaking adopts the language of the proposed rulemaking.

Section 1601.0-2 Objectives.

Section 1601.0-2 of the proposed rulemaking was the focal point of a large number of comments that objected to the perceived emphasis of the proposed rulemaking on economic values (maximizing resource values) and for the failure to recognize public participation mandated by the Federal Land Policy and Management Act, as opposed to mere consultation. As a result of the comments, the section was studied and has been changed in the final rulemaking to ensure public participation in the planning process. The final rulemaking retains the emphasis on maximizing resource values, consistent with the concept of

multiple use management, and adds the definition of the term "multiple use" to clarify previous misconceptions.

Section 1601.0-3 Authorities.

There were no comments on the proposed changes in § 1601.0-3 and the proposed changes have been adopted in the final rulemaking.

Section 1601.0-4 Responsibilities.

Many of the comments supported the change made in § 1601.0-4 by the proposed rulemaking. A few comments raised questions about the ability of an Area Office and its staff to handle the land use planning responsibility. The final rulemaking adopts the proposed change with clarification. Also, the described responsibilities of State Directors and District Managers in plan preparation and approval are refined. This makes clear the responsibility of the State Director to approve resource management plans, consistent with the authority delegated to State Directors to file environmental impact statements associated with plans. In addition, the final rulemaking contains changes that were made to eliminate duplicative provisions and redundant language.

Section 1601.0-5 Definitions.

Several comments on § 1601.0-5 of the proposed rulemaking recommended reinstating many of the definitions deleted in the proposed rulemaking. A careful restudy of the existing regulations in light of the comments led to changes in some of the definitions in the final rulemaking. In response to specific comments, changes have been made by the final rulemaking in the definition of the terms "consistent," "resource management plan," and "officially approved and adopted resource related plans," and the term "multiple use" is added to the definition section. In order to clarify the existing regulations and make them less burdensome, the final rulemaking has deleted several terms from the existing regulations.

Section 1601.0-6 Policy.

The comments on § 1601.0-6 of the proposed rulemaking expressed opposing views, with some charging that the change made by the proposed rulemaking would be contrary to the aim of making the regulations more efficient, while others expressed the view that the planning process might need two documents, a resource management plan and an environmental impact statement. After careful consideration of the comments, the final rulemaking amends the language of the proposed rulemaking and provides that the planning decision

should be issued in a single document, if possible. However, the issuing officer still retains discretion as to the form of the decision document(s).

Section 1601.0-7 Scope.

Only a few comments were directed to § 1601.0-7 of the proposed rulemaking. During the decisionmaking process on the final rulemaking, a careful review was made of this section and it was decided that it could be rewritten to express the intent of the section in substantially fewer words. As a result, the final rulemaking contains a substantially revised scope section.

Section 1601.0-8 Principles.

Some of the comments on this section objected to the change made by the proposed rulemaking, while other comments supported the shortening of the section. The objection to the change made by the proposed rulemaking was on the basis that the items dropped from the existing regulations were needed as guidance for the land use planning process. The final rulemaking adopts the language of the proposed rulemaking, with an amendment clarifying the point that public involvement, local economies and consideration of impacts on non-Federal lands are fundamental components of the planning process.

Section 1611 Guidance for planning— Section 1610.1 in Final.

Numerous comments addressed this section. Some questioned the use of guidance documents. Many expressed concern about the changes made in the sections of the existing regulations covering planning guidance, while others supported the concept that the existing regulations could be shortened by removing parts of the existing guidance language and putting them in the Bureau Manual. The final rulemaking contains a revision of the section of the proposed rulemaking, including the title, for further clarity and refinement. The revision retains the essential elements of the existing regulations, including the provision for public review of State Director guidance when the guidance is applied during the planning process.

The final rulemaking adopts as paragraph (b) of revised § 1610.1 the proposed rulemaking language for § 1611.2. A couple of comments expressed the view that State Directors should be furnished guidance for use in the decisionmaking process on whether to deviate from established resource area boundaries. This guidance will be furnished through the Bureau Manual and is not needed in the regulations.

Finally, paragraph (c) of § 1610.1 of the final rulemaking incorporates § 1611.3 of the proposed rulemaking. Language is added from the existing regulations allowing the District or Area Manager the discretion of supplementing his/her staff with outside assistance as necessary to achieve an interdisciplinary approach. The addition made to this paragraph meets the principal objection raised by those who commented on this section of the proposed rulemaking.

Section 1614 Public participation— Section 1610.2 in Final.

The proposed changes to the public participation provisions in section 1614 were the subject of the largest number of comments. The majority of the comments were critical of the proposed changes because they felt the proposed revisions weakened the regulations. Many suggested that the original language of § 1601.3 should be retained as the new § 1610.2 in the final rulemaking. The comments resulted in a total review of the public participation provisions and the modification in the final rulemaking to reflect recommendations in the comments. In addition to the changes made in the final rulemaking, the Bureau Manual will incorporate specific procedural standards to ensure that public participation is sought and used throughout the planning process.

One specific change made by the final rulemaking is retention of the 90-day review period for a draft resource management plan and draft environmental impact statement as a minimum instead of the 45 days called for in the proposed rulemaking and required by the Council on Environmental Quality regulations.

Many of the comments objected to the proposed rulemaking's removal from this section of the specific points in the preparation of the resource management plan where the public is notified of opportunity for participation in the process. These specific opportunities have been added by the final rulemaking to highlight and make clear important opportunities for public participation. The final rulemaking also adds requirements for conducting public hearings.

Several of the comments questioned the dedication of the Bureau of Land Management to the policy of public participation in its land-use planning process. The Bureau believes that meaningful public participation is essential to the planning process and that early consultation with the public and public involvement throughout the process leads to better decisionmaking.

The Bureau will continue its efforts to seek and obtain public participation in its land use planning process.

Section 1615 Coordination with other Federal agencies, State and local governments and Indian tribes—Section 1610.3 in Final.

This section in the final rulemaking is a rewrite of several sections of the proposed rulemaking. The coordination sections of the proposed rulemaking received a number of comments. Some complained that the changes made by the proposed rulemaking lessened the coordination opportunities of those outside the Bureau of Land Management. Some objected to the definition of consistency that was contained in the proposed rulemaking. Other comments supported the thrust of the changes made by the proposed rulemaking. The diversity of the comments on these sections resulted in a careful review of the coordination sections, with the aim of retaining the basic elements of coordination and clarifying, while eliminating the detail that was considered unnecessary, or more appropriate to the Bureau Manual. The coordination section in final rulemaking provides the essential elements of coordination while eliminating unneeded provisions.

The final rulemaking retains the specific provisions for coordination of Bureau planning activities and guidance as a basis for achieving plan consistency with existing officially adopted and approved plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected by Bureau of Land Management planning. As part of this requirement, the final rulemaking provides that the State Director should seek the policy advice of the affected Governor(s) early in the planning process.

The final rulemaking retains language making it clear that where there is a conflict between State and local governmental policies, plans and programs, the higher authority will normally be followed. This aids development of consistent resource management plans by adopting an established standard to which Bureau consistency efforts may be related.

Several comments expressed the view that the consistency requirements of the final rulemaking should give State governments greater control of the Bureau of Land Management planning process, while other comments wanted the final rulemaking to give State and local governments less influence on resource management planning. After

careful study of this question, the final rulemaking amends the consistency requirements language of the proposed rulemaking to give State Governments authority to review the resource management plan and plan amendments and to identify inconsistencies and provide recommendations on those inconsistencies. The final rulemaking requires the review of those recommendations and a procedure for appeal of the failure to accept them.

Section 1616.1 Identification of issues—Section 1610.4-1 in Final.

This section of the proposed rulemaking was the subject of only minor comments. The comments suggested that a change be made to allow issues to be added to the planning process without repeating issue identification. This suggestion was adopted by the final rulemaking, along with some language that clarifies the roles of the Area and District Manager in this action.

Section 1616.2 Development of Planning criteria—Section 1610.4-2 in Final.

Many of the numerous comments on § 1616.2 of the proposed rulemaking urged that the planning criteria be published for review and comment. Use of planning criteria throughout the planning process was generally viewed as an essential ingredient to substantive public participation in the planning process and a key to compliance with section 309(e) of the Federal Land Policy and Management Act. The final rulemaking adopts some of the language of the proposed rulemaking. However, the final rulemaking provides that proposed planning criteria be made available for public comment prior to being approved by the District Manager for use in the planning process. The final rulemaking also contains a commitment that only approved planning criteria shall be used in the planning process. Finally, the final rulemaking adds language to the proposed rulemaking describing the basis of the planning criteria. The Bureau Manual will require the use of approved planning criteria in each of the subsequent actions in the resource management planning process.

Section 1616.3 Inventory data and information collection—Section 1610.4-3 in Final.

The comments on § 1616.3 of the proposed rulemaking raised questions about the extent of the inventories that are conducted in connection with the land use planning activity. The land use planning inventories are supplemental to the basic resource inventories that

are conducted by the various programs in connection with their basic needs. The requirements for the basic resource inventories are established by the programs in their respective sections of the Bureau of Land Management Manual. These manual sections are available for public inspection at any time. In response to the comments, the section has been amended to clarify the issues raised and to remove aspects repetitive of requirements in the National Environmental Policy Act and associated procedures.

Section 1616.4 Analysis of the management situation—Section 1610.4-4 in Final.

The comments on this section expressed a range of views, some supporting the changes made by the proposed rulemaking and others supporting retention of the language of the existing regulations. After careful reviews of the comments, the section has been expanded in the final rulemaking to clearly express its intent. The final rulemaking retains the list of factors which may be considered at this stage of the planning process. However, the methodologies for determining capabilities require substantial development work, and continued updating of guidance on capability and use of the concept will be incorporated in Bureau of Land Management Manual instruction. The provisions for Areas of Critical Environmental Concern have been moved to § 1610.7-2 in the final rulemaking.

Section 1616.5 Formulation of alternatives—Section 1610.4-5 in Final.

Section 1616.5 was the focus of numerous comments that were critical of the changes made by the proposed rulemaking, particularly the removal of the existing requirement for a range of choices for alternatives favoring resource protection. The final rulemaking, consistent with regulations implementing the National Environmental Policy Act, requires that all reasonable alternatives be considered during the planning process. The requirement in the existing regulations for noting alternatives that were identified and eliminated from the study, with the reasons for the elimination, has been adopted in this final rulemaking.

Section 1616.6 Estimation of the effects of alternatives—Section 1610.4-6 in Final.

The comments on this section of the proposed rulemaking felt the proposed deletion of the data reliability phrase weakened the regulations. The final

rulemaking adopts the language of the proposed rulemaking and also adopts language which provides for the planning process to be guided by the data reliability provisions of the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act.

Section 1616.7 Selection of preferred alternatives—Section 1610.4-7 in Final.

The comments on § 1616.7 were nearly universal in their objection to the deletion of the requirement that the selection of the preferred alternative be based on the planning criteria as well as guidance. The intent was not to avoid consideration of the criteria and the final rulemaking adopts language which clarifies the intent of the proposed rulemaking.

After considering the comments on the question of referral of the draft plan and draft environmental impact statement to the Governor(s) of the affected State(s), the final rulemaking had been amended to make it clear that all draft plans and draft environmental impact statements, not just plans involving coal resources, will be referred to the Governor(s) of the affected State(s) as well as other governmental entities for comments. The section has also been amended to clarify what documents are furnished to the State Director and to provide for subsequent State Director approval of the plan.

Section 1616.8 Selection of a resource management plan—Section 1610.4-8 in Final.

The comments on § 1616.8 generally opposed the changes in the proposed rulemaking. Apparently, the public had the misunderstanding that this provision constitutes final adoption of the plan. This is not the case, and since the principal provision deleted by the proposed rulemaking is covered by provisions of the Council on Environmental Quality regulations on the National Environmental Policy Act it is not repeated in the final rulemaking. However, the section has been amended in the final rulemaking to clarify the intent of this provision. The amendment also makes clear the supervisory responsibility of the State Director.

Section 1616.9 Monitoring and evaluation—Section 1610.4-9 in Final.

There were few comments on this section. The final rulemaking has been further clarified while retaining the provision for established intervals for monitoring but removes the "not more than 5 years" since each resource management plan must explicitly

provide for monitoring at specific intervals. The final sentence in the proposed rulemaking is not needed since monitoring reports and records is part of the documentation relevant to the planning process and are available for public review.

Section 1617.1 Resource management plan approval and administrative review—Section 1610.5-1 in Final.

The final rulemaking amends § 1617.1 of the proposed rulemaking by rewriting paragraph (a) to condense it, and reflect the basic requirement for the State Director to approve and take action on the resource management documents. The procedural requirements for the approval process will be set out in the Bureau Manual section on planning. Further, the final rulemaking deletes the sentence in paragraph (b) dealing with the designation of Areas of Critical Environmental Concern. This sentence is no longer needed because the regulations contain a specific section on designation of Areas of Critical Environmental Concern.

Section 1617.2 Protest Procedures—Section 1610.5-2 in Final.

There were several objections to the change in the protest provision made by § 1617.1(d) of the proposed rulemaking. After careful analysis of the comments, it was determined that the public misunderstood the proposed change, which was designed to clarify the protest provision. In addition, changes have been made in this provision in the final rulemaking to provide for a one-stage protest process to correspond with the delegation of plan approval and environmental impact statement filing authority to the State Director level. A specific subsection is established for protest procedures and subsequent subsections in § 1611.5 are renumbered in the final rulemaking.

Section 1617.3 Conformity and implementation—Section 1610.5-3 in Final.

After a careful review of the few comments received on § 1617.3 of the proposed rulemaking, the final rulemaking makes only minor changes in the content of the section, but rewrites it for clarity and brevity, including the addition of a new paragraph that makes it clear that more detailed plans for coal, oil shale and tar sand must not only conform to the provisions of their applicable

regulations, but must also conform to the requirements of this part.

Section 1617.4 Changing the resource management plan—Section 1610.5-4, 1610.5-8 in Final.

In response to concerns raised in the comments on the section of the proposed rulemaking that the provision on maintenance appeared to allow a minor change in the scope of resource use in a plan, the final rulemaking amends the maintenance provision and the amendment provision to make clear the distinct difference between the two concepts and their impacts on an existing plan. The final rulemaking makes it clear that maintenance cannot make a change in the scope of resource use in a plan, while an amendment can make a change in the scope of resource use.

Even though a large number of comments on the revision provision of the proposed rulemaking questioned the deletion of the 10-year update requirement, none of those comments made a convincing argument for restoring the 10-year requirement to replace the "as necessary" provision in the proposed regulations.

Section 1617.7 Designation of areas unsuitable for surface mining—Section 1610.7-1 in Final.

This section has been revised by the final rulemaking in order to bring the planning regulations into conformance with the Federal Coal Management regulations in Group 3400 of Title 43 of the Code of Federal Regulations and to clarify the use of plans in the management of Federal coal resources. Therefore, to be consistent with the Federal Coal Management regulations, this amendment allows the application of the unsuitability criteria to areas already under lease during mine plan review, rather than during the preparation of resource management plan.

Section 1617.8 Designation of Areas of Critical Environmental Concern—Section 1610.7-2 in Final.

A great number of comments were concerned about the changes the proposed rulemaking would make in the provisions for Areas of Critical Environmental Concern. After restudy in light of the comments, most of the provisions of the existing regulations covering Areas of Critical Environmental Concern have been restored by the final rulemaking and consolidated in this section to show how they are provided for in the planning process and in the regulations. Many

comments recommended restudying the identification criteria that are in the existing regulations. After careful consideration of the comments and the regulations, the final rulemaking restores two of the four identification criteria that are presently in the existing regulations. The criteria that are being restored are those that are considered most germane to the identification process. The decision on this section of the final rulemaking was based in part on the comments received on the proposed rulemaking published in the Federal Register on December 16, 1980 (45 FR 82879).

Language has been added by the final rulemaking that requires the State Director to publish a notice in the Federal Register for public comment when a draft resource management plan involves the potential designation of an Area of Critical Environmental Concern.

The final rulemaking does not adopt the suggestion made by a few of the comments to restore existing § 1601.7-1 dealing with the maintenance of records of the planning and environmental analysis process. These requirements can be handled by the planning process guidance in the Bureau manual.

Three comments objected to the deletion of § 1601.7-2 of the existing regulations concerning authority annotations. After a careful review of the comments and the regulations, it was decided that there was no need to retain that section and the final rulemaking does not restore it.

Deletion of § 1601.7-3 from the existing regulations was also objected to by several of the comments. The final rulemaking does not change the proposed rulemaking with reference to this section because of the belief that document content is more appropriate for Bureau Manuals than for regulations.

Section 1618 Transition period—Section 1610.8 in the Final.

The comments on section 1618 were concerned about the language of the proposed rulemaking that was read to mean that existing management framework plans would be retained rather than going forward with the completion of resource management plans. The final rulemaking makes clear the intention of the Bureau of Land Management to complete resource management plans for lands under its jurisdiction as rapidly as possible, on a priority basis, within fiscal and manpower constraints. The final rulemaking adopts the title of this section in the existing regulations

because it more accurately reflects the function of the section.

Several of the comments questioned the lack of an environmental impact statement for this rulemaking. An environmental assessment was prepared and has been reviewed in light of the changes in the final rulemaking. The environmental assessment indicates that the changes in the existing regulations made by the final rulemaking would have no significant impact on the human environment. A Finding of No Significant Impact was also prepared. Further, an environmental impact statement is prepared with each resource management plan. The planning process also provides for each plan amendment to be subject to the preparation of an environmental impact statement.

Editorial and grammatical changes, as needed, have been made.

The principal author of this final rulemaking is David C. Williams, Office of Planning and Environmental Coordination, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

These amendments to the existing planning regulations will not have any significant impact on the economy. The changes made by this amendment will reduce the regulatory burden imposed on the public by the existing planning regulations.

The planning regulations that are being amended by this final rulemaking have an impact on all public lands under the jurisdiction of the Bureau of Land Management. The planning process is required for all actions taken by the Bureau on the public lands and affects all entities equally.

List of Subjects in 43 CFR Part 1600

Administrative practice and procedures, Environmental impact statements, Indians, Intergovernmental relations, Public lands, Public lands—classification.

Under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711 and 1712), Part 1600, Subchapter A, Chapter II of Title 43 of the Code of

Federal Regulations is revised to read as set forth below.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
May 2, 1983.

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

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Authority: 43 U.S.C. 1711-1712.

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

§ 1601.0-1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management.

§ 1601.0-2 Objective.

The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.

§ 1601.0-3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); the Public Rangelands Improvement Act of 1976 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

1601.0-4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.

(b) State Directors shall provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and shall provide additional guidance, as necessary, for use by District and Area managers. State Directors shall file draft and final environmental impact statements associated with resource management plans and amendments.

(c) Resource management plans, amendments, revisions and related environmental impact statements shall be prepared by District or Area

Managers, and approved by State Directors. In general, Area Managers will be responsible for directly supervising the preparation of the plan, and the District Manager for providing general direction and guidance to the planning effort.

§ 1601.0-5 Definitions.

As used in this part, the term:

(a) "Areas of Critical Environmental Concern" or "ACEC" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(b) "Conformity or conformance" means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(c) "Consistent" means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title.

(d) "Guidance" means any type of written communication or instruction that transmits objectives, goals, constraints, or any other direction that helps the District and Area Managers and staff know how to prepare a specific resource management plan.

(e) "Local government" means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(f) "Multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced

and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(g) "Officially approved and adopted resource related plans" means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.

(h) "Public" means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of State, local, and Indian tribal governments.

(i) "Public lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(j) "Resource area" means a geographic portion of a Bureau of Land Management district. It is the administrative subdivision whose manager has primary responsibility for day-to-day resource management activities and resource use allocations and is, in most instances, the area for which resource management plans are prepared and maintained.

(k) "Resource management plan" means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document:

(1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for an area to be covered by more detailed and specific plans;

(6) Support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above;

(7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

It is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

§ 1601.0-6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.

§ 1601.0-7 Scope.

(a) These regulations apply to all public lands.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0-8 Principles.

The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the principles described in section 202 of the Federal Land Policy and Management Act of 1976. Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over Federally-owned mineral interests shall be considered.

Subpart 1610—Resource Management Planning

§ 1610.1 Resource management planning guidance.

(a) Guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed, to help the District and Area Manager and staff prepare a specific plan. Such guidance may include the following:

(1) National level policy which has been established through legislation, regulations, executive orders or other Presidential, Secretarial or Director approved documents. This policy may include appropriately developed resource management commitments, such as a right-of-way corridor crossing several resource areas, which are not required to be reexamined as part of the planning process.

(2) Analysis requirements, planning procedures and other written information and instructions required to be considered in the planning process.

(3) Guidance developed at the State Director level, with necessary and appropriate governmental coordination as prescribed by § 1610.3 of this title. Such guidance shall be reconsidered by the State Director at any time during the planning process that the State Director level guidance is found, through public involvement or other means, to be inappropriate when applied to a specific area being planned.

(b) A resource management plan shall be prepared and maintained on a resource area basis, unless the State Director authorizes a more appropriate area.

(c) An interdisciplinary approach shall be used in the preparation, amendment and revision of resource management plans as provided in 40 CFR 1502.6. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The District or Area Manager may use any necessary combination of Bureau of Land Management staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

§ 1610.2 Public Participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall

conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.

(c) Upon starting the preparation, amendment or revision of resource management plans, public participation shall be initiated by a notice published in the Federal Register and appropriate media, including newspapers of general circulation in the State, adjoining States where the District Manager deems it appropriate, and the District. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7). This notice shall include the following:

(1) Description of the proposed planning action;

(2) Identification of the geographic area for which the plan is to be prepared;

(3) The general types of issues anticipated;

(4) The disciplines to be represented and used to prepare the plan;

(5) The kind and extent of public participation opportunities to be provided;

(6) The times, dates and locations scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at the time;

(7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information; and

(8) The location and availability of documents relevant to the planning process.

(d) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the District Manager and those on the list shall be notified of public participation activities.

Individuals or groups may ask to be placed on this list. Public participation activities conducted by the Bureau of Land Management shall be documented by a record or summary of the principal issues discussed and comments made.

The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.

(e) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement. The 90-day period shall begin when the Environmental Protection Agency publishes a notice of the filing of the draft environmental impact statement in the Federal Register.

(f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

(1) General notice at the outset of the process inviting participation in the identification of issues (See §§ 1610.2(f) and 1610.4-1);

(2) Review of the proposed planning criteria (See § 1610.4-2);

(3) Publication of the draft resource management plan and draft environmental impact statement (See § 1610.4-7);

(4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See §§ 1610.4-8 and 1610.5-1(b)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See § 1610.5-1(b)).

(g) Copies of an approved resource management plan and amendments shall be reasonably available for public review. This includes copies at the State Office for the District, the District Manager's Office, the Area Office for lands directly involved and additional locations determined by the District Manager. Plans, amendments and revisions shall be published and single copies shall be available to the public upon request during the public participation process. After approval, a fee may be charged for additional copies at a rate established by the Director.

(h) Supporting documents to a resource management plan shall be available for public review at the office where the plan was prepared.

(i) Fees for reproducing requested documents beyond those used as part of the public participation activities and other than single copies of the printed plan amendment or revision may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR Part 2.

(j) When resource management plans involve areas of potential mining for

coal by means other than underground mining, and the surface is privately owned, the Bureau of Land Management shall consult with all surface owners who meet the criteria in § 3400.0-5 of this title. Contact shall be made in accordance with Subpart 3427 of this title and shall provide time to fully consider surface owner views. This contact may be made by mail or in person by the District or Area Manager or his/her appropriate representative. A period of at least 30 days from the time of contact shall be provided for surface owners to convey their preference to the Area or District Manager.

(k) If the plan involves potential for coal leasing, a public hearing shall be provided prior to the approval of the plan, if requested by any person having an interest which is, or may be, adversely affected by implementation of such plan. The hearing shall be conducted as prescribed in § 3420.1-5 of this title and may be combined with a regularly scheduled public meeting. The authorized officer conducting the hearing shall:

(1) Publish a notice of the hearing in a newspaper of general circulation in the affected geographical area at least once a week for 2 consecutive weeks;

(2) Provide an opportunity for testimony by anyone who so desires; and

(3) Prepare a record of the proceedings of the hearing.

§ 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3-1 Coordination of planning efforts.

(a) In addition to the public involvement prescribed by § 1610.2 of this title the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of the coordination are for the State Directors and District and Area Managers to keep apprised of non-Bureau of Land Management plans; assure that consideration is given to those plans that are germane in the development of resource management plans for public lands; assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans; and provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes in the development of resource management plans, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.

(b) State Directors and District and Area Managers shall provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. To facilitate coordination with State governments, State Directors should seek the policy advice of the Governor(s) on the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use opportunities and constraints on public lands. State Directors may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the State Director shall provide opportunity for Governor and State agency review, advice and suggestions on issues and topics that the State Director has reason to believe could affect or influence State government programs.

(c) In developing guidance to District Managers, in compliance with section 1611 of this title, the State Director shall:

(1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by § 1610.3-2 of this title;

(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.

(d) A notice of intent to prepare, amend, or revise a resource management plan shall be submitted, consistent with State procedures for coordination of Federal activities, for circulation among State agencies. This notice shall also be submitted to Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the

plan or amendment. These notices shall be issued simultaneously with the public notices required under § 1610.2(b) of this title.

(e) Federal agencies, State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals. Should they notify the District or Area Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

(f) When an Advisory Council has been formed under section 309 of the Federal Land Policy and Management Act for the district in which the resource area is located, that council shall be informed and their views sought and considered throughout the resource management planning process.

§ 1610.3-2 Consistency requirements.

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water,

noise and other pollution standards or implementation plans.

(c) State Directors and District and Area Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall provide the public with an opportunity to comment on the recommendation(s). If the State Director does not accept the recommendations of the Governor(s), the State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the National interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

§ 1610.4 Resource management planning process.

§ 1610.4-1 Identification of issues.

At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection

opportunities for consideration in the preparation of the resource management plan. The District and Area Manager shall analyze those suggestions, plus available district records of resource conditions, trends, needs and problems, and select topics and determine the issues to be addressed during the planning process. Issues may be modified during the planning process to incorporate new information. The identification of issues shall also comply with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

§ 1610.4-2 Development of planning criteria.

The District or Area Manager shall prepare criteria to guide development of the resource management plan or revision, to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection and analyses are avoided. Planning criteria shall generally be based upon applicable law, Director and State Director guidance, the results of public participation and coordination with other Federal agencies, State and local governments and Indian tribes. Proposed planning criteria, including any significant changes, shall be made available for public comment prior to being approved by the District manager for use in the planning process. Planning criteria may be changed as planning proceeds, based on public suggestions, and the findings of the various studies and assessments.

§ 1610.4-3 Inventory data and information collection.

(a) The District or Area Manager shall arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.

§ 1610.4-4 Analysis of the management situation.

The District or Area Manager shall analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the

types of resources for development or protection. Factors to be considered may include, but are not limited to:

- (a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;
- (b) Opportunities to meet goals and objectives defined in national and State Director guidance;
- (c) Resource demand forecasts and analyses relevant to the resource area;
- (d) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;
- (e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;
- (f) Opportunities to resolve public issues and management concerns;
- (g) Degree of local dependence on resources from public lands;
- (h) The extent of coal lands which may be further considered under provisions of § 3420.2-3(a) of this title; and
- (i) Critical threshold levels which should be considered in the formulation of planned alternatives.

§ 1610.4-5 Formulation of alternatives.

All reasonable resource management alternatives shall be considered and several complete alternatives developed for detailed study. The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses. In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as subalternatives. One alternative shall be for no action, which means continuation of present level or systems of resource use. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

§ 1610.4-6 Estimation of effects of alternatives.

The District or Area Manager shall estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing

the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.4-7 Selection of preferred alternative.

The District or Area Manager shall evaluate the alternatives and the estimation of their effects according to the planning criteria, and develop a preferred alternative which shall best meet Director and State Director guidance. The preferred alternative shall be incorporated into the draft resource management plan and draft environmental impact statement. The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the State Director for approval, publication, and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided for comment to the Governor of the State involved, and to officials of other Federal agencies, State and local governments and Indian tribes that the State Director has reason to believe would be concerned. This action shall constitute compliance with the requirements of § 3420.1-7 of this title.

§ 1610.4-8 Selection of resource management plan.

After publication of the draft resource management plan and draft environmental impact statement, the District Manager shall evaluate the comments received and select and recommend to the State Director, for supervisory review and publication, a proposed resource management plan and final environmental impact statement. After supervisory review of the proposed resource management plan, the State Director shall publish the plan and file the related environmental impact statement.

§ 1610.4-9 Monitoring and evaluation.

The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan.

The District Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards

and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.

§ 1610.5 Resource management plan approval, use and modification.

§ 1610.5-1 Resource management plan approval and administrative review.

(a) The proposed resource management plan or revision shall be submitted by the District Manager to the State Director for supervisory review and approval. When the review is completed the State Director shall either publish the proposed plan and file the related environmental impact statement or return the plan to the District Manager with a written statement of the problems to be resolved before the proposed plan can be published.

(b) No earlier than 30 days after the Environmental Protection Agency publishes a notice of the filing of the final environmental impact statement in the Federal Register, and pending final action on any protest that may be filed, the State Director shall approve the plan. Approval shall be withheld on any portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act of 1969 (40 CFR 1505.2).

§ 1610.5-2 Protest procedures.

(a) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the Federal Register. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision of the Department of the Interior.

§ 1610.5-3 Conformity and implementation.

(a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.

(b) After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the District and Area Manager shall take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use, conform to the approved plan or amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation.

(c) If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment in accordance with the provisions of § 1610.5-5 of this title.

(d) More detailed and site specific plans for coal, oil shale and tar sand resources shall be prepared in accordance with specific regulations for those resources: group 3400 of this title for coal; group 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans shall be in

conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.5-4 Maintenance.

Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records.

§ 1610.5-5 Amendment.

A resource management plan may be changed through amendment. An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan. An amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary, public involvement as prescribed in § 1610.2 of this title, interagency coordination and consistency determination as prescribed in § 1610.3 of this title and any other data or analysis that may be appropriate. In all cases, the effect of the amendment on the plan shall be evaluated. If the amendment is being considered in response to a specific proposal, the analysis required for the proposal and for the amendment may occur simultaneously.

(a) If the environmental assessment does not disclose significant impact, a finding of no significant impact may be made by the District Manager. The District Manager shall then make a recommendation on the amendment to the State Director for approval, and upon approval, the District Manager shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(b) If a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of the plan, but consideration shall be limited to that portion of the plan being considered for amendment. If several plans are being amended simultaneously, a single environmental impact statement may be prepared to cover all amendments.

§ 1610.5-6 Revision.

A resource management plan shall be revised as necessary, based on monitoring and evaluation findings (§§ 1610.4-9), new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1610.5-7 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area. There are situations of mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the Bureau of Land Management with another Federal agency. The District and Area Manager may use the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, State, or local) may be used as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public participation.

(b) After evaluation and review, the Bureau of Land Management may adopt another agency's plan for continued use as a resource management plan if an agreement is reached between the Bureau of Land Management and the other agency to provide for maintenance and amendment of the plan, as necessary, to comply with law and policy applicable to public lands.

(c) A land use analysis may be used to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an

environmental assessment or impact statement, public participation as required by § 1610.2 of this title, the consultation and consistency determinations required by § 1610.3 of this title, the protest procedure prescribed by § 1610.5-2 of this title and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of the Federal Land Policy and Management Act. The decision to approve the land use analysis and to lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.

§ 1610.6 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1610.7 Designation of areas.

§ 1610.7-1 Designation of areas unsuitable for surface mining.

(a)(1) The planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the Bureau of Land Management for comment, the resource management plan, or plan amendment if available, shall be the basis for review.

(3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the District Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

(b)(1) The resource management planning process is the chief process by

which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 801 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate lands unsuitable under section 801 of the Surface Mining Control and Reclamation Act are received by the Bureau of Land Management, the resource management plan, if available, shall be the basis for determinations for designation.

(3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the District Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

§ 1610.7-2 Designation of areas of critical environmental concern.

Areas having potential for Areas of Critical Environmental Concern (ACEC) designation and protection management shall be identified and considered throughout the resource management planning process (see §§ 1610.4-1 through 1610.4-9).

(a) The inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria shall be met:

(1) *Relevance.* There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

(2) *Importance.* The above described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local

significance and special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(b) The State Director, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation. The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of any ACEC involved. The approved plan shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC.

§ 1610.8 Transition period.

(a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

(1) The management framework plan shall be in compliance with the principle of multiple use and sustained yield and shall have been developed with public participation and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this title.

(2) No sooner than 30 days after the Environmental Protection Agency publishes a notice of the filing of a final court-ordered environmental impact statement—which is based on a management framework plan—proposed actions may be initiated without any further analysis or processes included in this subpart.

(3) For proposed actions other than those described in paragraph (a)(2) of this section, determination shall be made by the District or Area Manager whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance, it may be further considered for decision under procedures applicable to that type of action, including requirements of regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR Parts 1500-1508.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further favorable consideration before a resource management plan is scheduled for preparation, such consideration shall be through a management framework plan amendment using the provisions of § 1610.5-5 of this title.

(b)(1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment and an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision, shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

(2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.5-5 of this title for amending a plan.

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APPENDIX B

to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR Part 4, Subpart E. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet official. The requesting official,

the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Board of Land Appeals to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Group 2700—Disposition; Sales

NOTE: The information collection requirements contained in Part 2740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0012. The information is being collected to permit the authorized officer to determine if disposition of public lands should be made for recreation and public purposes. The information will be used to make this determination. A response is required to obtain a benefit.

[48 FR 40889, Sept. 12, 1983]

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales—General Provisions

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- 2711.5-1 Mineral reservation.
- 2711.5-2 Terms, covenants, conditions, and reservations.
- 2711.5-3 Notice of conveyance.

AUTHORITY: 43 U.S.C. 1713, 1740.

SOURCE: 45 FR 39418, June 10, 1980, unless otherwise noted.

Subpart 2710—Sales—General Provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets any or all of the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by

Title 43—Public Lands: Interior

maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) "Public lands" means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) "Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) "Family sized farm" means the unit of public lands determined to be chiefly valuable for agriculture, and that is of sufficient size, based on land use capabilities, development requirements and economic capability, to provide a level of net income, after payment of expenses and taxes, which will sustain a family sized agribusiness operation above the poverty level for a rural farm family of 4 as determined by the Bureau of Labor Statistics, U.S. Department of Labor, for the calendar year immediately preceeding the year of the proposed sale under the regulations of this part. The determination of the practical size is an economic decision to be made on a local area basis, considering, but not limited to, factors such as: Climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the

locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with Part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Bureau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title).

(c) Sales of public lands shall generally be through competitive bidding procedures provided for in § 2711.3-1 of this title.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units, at any given sale, shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. The value of authorized improvements owned by anyone other than the United States upon lands being sold shall not be included in the determination of fair market value. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the Act that are to be in sales patents and other conveyance documents, except where

inclusion of such provisions is required by law or for protection of valid existing rights.

§ 2710.0-8 Lands subject to sale.

(a) All public lands, as defined by § 2710.0-5 of this title, and, which meet the disposal criteria specified under § 2710.0-3 of this title, are subject to sale pursuant to this part, except:

(1) Those public lands within the re-vested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the Act.

(2) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

(3) Public lands classified, withdrawn, reserved or otherwise designated as not available or subject to sale shall not be sold under the regulations of this part until issuance of an order or notice which either opens or provides for such disposition.

(b) Unsurveyed public lands shall not be sold under the regulations of this part until they are officially surveyed under the public land survey system of the United States. Such survey shall be completed and approved by the Secretary prior to any sale.

Subpart 2711—Sales—Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with

§§ 1601.3, 1601.6-3 or § 1601.8 of this title.

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

(b) The notice shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands and the head of any political subdivision having administration or public services responsibility in the geographic area within which the public lands are located, are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

(c) The notice shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale.

(d) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the Act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When the sale of a tract, as identified, requires the cancellation of a grazing permit or lease, in its entirety, notice shall be given the permittee or

lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (See 43 CFR 4110.4-2(b)). The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) A citizen of the United States 18 years of age or over;

(b) A corporation subject to the law of any State or of the United States;

(c) A State, State instrumentality or political subdivision authorized to hold property; and

(d) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section.

§ 2711.3 Procedures for sale.

§ 2711.3-1 Sales through competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place, and manner for submitting bids shall be specified in the notice required by § 2711.1-2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing.

The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to § 2711.1-2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid, designated by type, whether sealed or oral, shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder, whether such bid is a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the full bid price prior to, but not including the 30th day following the day of the sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1-2 of this title, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. In case of a tract of land in excess of 2,500 acres, such acceptance or rejection shall not be given until the expiration of 30 days after the end of the notice to the Congress provided for in § 2711.1-2(d) of this title. Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

§ 2711.3-2 Sale by other than competitive bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: Needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1-2 of this title.

(b) Noncompetitive sales may be utilized when, in the opinion of the authorized officer the public interest would best be served by a direct sale. Examples include, but are not limited to:

(1) A tract identified for transfer to State of local government;

(2) A tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize the timely completion and economic viability of the project; or

(3) There is a need to recognize authorized use, for example, when an existing business would be threatened if the tract were purchased by other than the authorized user.

(c) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3-1(c) of this title.

(d) Acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in § 2711.3-1 (f) and (g) of this title.

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4-1 of this title or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner has not been declared the purchaser of the lands sold, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States

of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in Part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

§ 2711.5-2 Terms, covenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the Act.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall publish a notice in the FEDERAL REGISTER and immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

Sec.

- 2720.0-1 Purpose.
- 2720.0-2 Objectives.
- 2720.0-3 Authority.
- 2720.0-5 Definitions.
- 2720.1 Application to purchase federally-owned mineral interests.
- 2720.1-1 Filing of application.
- 2720.1-2 Form of application.
- 2720.1-3 Action on application.

APPENDIX C

current value of funds to the Treasury on the outstanding advance from the date of billing to the date of payment, if still not paid on/before the due date set on the bill for collection. If full payment is not received by AID within 90 days from the due date of the bill for collection, the following additional charges will be assessed: (1) The costs of processing and handling the delinquent bill for collection, and (2) a penalty charge of 6% per annum on the unpaid balance of the bill for collection.

(d) The contractor agrees that all interest earned on funds advanced will be promptly repaid to the Government. At no time may any such interest be retained by the contractor or used for any purpose.

Authority: This proposed rule is issued under 41 CFR 7-1.006-51, in accordance with OFFP Policy Letter 83-2.

Dated: November 23, 1983.

John F. Owens,

Associate Assistant to the Administrator for Management.

[FR Doc. 83-35460 Filed 12-6-83; 8:48 am]

BILLING CODE 6110-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2700

Sales—Federal Land Policy and Management Act; Amendment to the Sales Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking would amend the existing regulations to simplify the procedures for the disposal of public lands. The amendment would remove redundant or unnecessary requirements: would change the terms for payment for public lands; and would provide for more streamlined and efficient procedures.

DATE: Comments by February 6, 1983. Any comments postmarked or received after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1600 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William F. Krech, (202) 343-8693;

or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would make a number of changes in the existing regulations on sales. It would amend the existing regulations in 11 respects.

(1) The proposed rulemaking would allow the public to nominate or request for disposal tracts not previously identified in land use plans for disposal. All new tracts that are nominated or requested would require an amendment to the land use plan to determine disposal suitability.

(2) To facilitate a better understanding of terms used in the proposed rulemaking, the proposed rulemaking adds three new terms to the definitions section of the existing regulations, auction, over-the-counter and realtor contract sales.

(3) The proposed rulemaking would amend the policy section to include criteria for determining when competitive, modified competitive or direct sales should be used. Sections 2711.3-1 and 2711.3-2 would be rewritten to reflect the proposed changes in competitive and modified sales. In addition, a new § 2711.3-3, covering "direct sales," would be added by the proposed rulemaking.

(4) Another change to the policy section would be an amendment that adds language allowing the authorized officer to determine the scope and specific documentation needed for appraisal, while maintaining the principles out-lined in the publication "Uniform Appraisal Standards for Federal Land Acquisitions."

(5) An amendment to the notice of realty action section would give the State Directors authority to notify the appropriate Members of Congress of the proposed sale.

(6) Language on segregation would be added to the section on notice of realty action to preclude public entry of public lands offered for sale after publication of the notice of realty action. This would make the lands more attractive to purchasers.

(7) A section would be added to allow a notice published under the Bureau of Land Management's land use planning regulations (§ 1610.5-5) to be substituted for the publication of the notice of realty action, thereby allowing the expediting of a sale. Any sales notice published under the land use planning regulations must be the functional equivalent of the notice of realty action required by the sales regulations.

(8) An amendment to the section requiring grazing permit or lease cancellation would require a two-year

notice to a permittee or lessee if any part of the grazing permit or lease would be affected by the sale. Sales could be made of those lands, with the sale being conditioned upon continuance of the lease or permit.

(9) An amendment to the payment requirement in the section on competitive bidding would extend the permitted period for payment of the full purchase price from 30 days to up to 180 days. The experience of the Bureau of Land Management in its sales of public lands has shown that the 30-day requirement does not allow sufficient time for the purchasers to obtain the funds needed to complete the purchase. This restricts potential purchasers who would otherwise enter the market.

(10) Another amendment to the section on competitive bidding would remove the requirement that one-fifth of the purchase price accompany a sealed bid and would replace it with a requirement that the amount required to accompany the sealed bid be set in the notice of realty action. It would provide that the amount would not be less than 10 percent of the purchase price nor more than 30 percent of that price. The theory behind this amendment is that the payment submitted with the bid should be larger for less expensive tracts and smaller for the more expensive tracts to be equitable for all purchasers. The setting of the percentage would be based on a range: tracts valued at \$10,000 or less, 30 percent; tracts valued at \$10,000 to \$100,000, 20 percent; and tracts with a value of more than \$100,000, 10 percent.

(11) The section on notice of conveyance would be deleted because the requirements of that section duplicate efforts already expended in publishing and recording the patent or other document of conveyance with the appropriate local agency.

Many of the amendment made by this proposed rulemaking were suggested by the comments received in response to the notice of intent to propose rulemaking published in Federal Register of January 12, 1983 (48 FR 1324). The thirty comments made several suggestions and recommendations, all of which were given careful consideration as part of the decisionmaking process on this proposed rulemaking.

The principal author of this proposed rulemaking is William F. Krech, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the

quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes that would be made by this proposed rulemaking are minor in nature and have equal impact on all parties seeking to buy public lands. The proposal to allow an extension of time for the payment of the full purchase price should benefit small businesses and small governmental entities by giving them more time to obtain the needed financing for purchasing public lands.

This proposed rulemaking contains no information collection requirements requiring approval by the office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 43 CFR Part 2710

Administrative practice and procedure. Grazing lands. Public lands—mineral resources. Public lands—sale.

PART 2700—[AMENDED]

Under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), it is proposed to amend part 2710, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 2710.0-5 [Amended]

1. Section 2710.0-5 is amended by adding new paragraphs (f), (g) and (h) to read:

(f) "Over-the-counter sales" means sales of lands that have been offered at public sale but not sold. Such lands shall be offered only under competitive procedures under an acceptable method of bidding. No bidders shall be given special preference to purchase the lands offered under this process.

(g) "Realtor contract sales" means sales of lands offered under modified competitive procedures by a real estate broker under contract. Sales shall be made in a manner followed in similar commercial transactions. The authorized officer shall publish a notice of realty action in accordance with the procedures in § 2711.1-2 of this title. Said notice shall state that the sale is to be made through a real estate broker.

(h) "Auction sales" means competitive sales where qualified bidders are given an equal opportunity to submit an offer to purchase the offered lands and no bidder shall be given a special preference to purchase the lands.

§ 2710.0-6 [Amended]

2. Section 2710.0-6 is amended by:

a. Amending paragraph (b) by adding at the end thereof the sentence "Nominations or requests to have specific tracts of public lands offered for sale may also be made by direct request to the authorized officer.;"

b. Revising paragraph (c) to read:

(c)(1) The Federal Land Policy and Management Act (43 U.S.C. 1713(f)) provides that sales of public lands under this section shall be conducted under competitive bidding procedures established by the Secretary. However, where the Secretary determines it necessary and proper in order to assure equitable distribution among purchasers of lands, or to recognize equitable considerations or public policies, including but not limited to, a preference to users, he/she may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

- (i) The State in which the lands are located;
 - (ii) The local government entities in such State which are in vicinity of the lands;
 - (iii) Adjoining landowners;
 - (iv) Individuals; and
 - (v) Any other person.
- (2) When a parcel of land meets the sale criteria of section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713), several factors shall be considered in determining the method of sale. These factors include, but are not limited to: competitive interest; needs of State and local governments; adjoining landowners historical uses; and equitable distribution of land ownership.

(3) Three methods of sale are provided for in § 2711.3 of this title: competitive; modified competitive; and direct (non-competitive). The policy for selecting the method of sale is:

(i) Competitive sale as provided in § 2711.3-1 of this title is the general procedure for sales of public lands and shall be used where there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and useable regardless of adjoining land ownership and (B) wherever the lands are within a developing or urbanizing area and land

values are increasing due to their location and interest on the competitive market.

(ii) Modified competitive sale as provided in § 2711.3-2 of this title may be used to permit the existing grazing user or adjoining landowner to meet the high bid at the public sale. This procedure will allow for limited competitive sales to protect on-going uses, to assure compatibility of the possible uses with adjacent lands, and avoid dislocation of existing users. Lands offered under this procedure would normally be public lands not located near urban expansion areas, or with rapidly increasing land values, and existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(iii) Direct sale as provided in § 2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or non-profit corporations, or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

(4) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.

(5) In no case shall lands be sold for less than fair market value."

c. Amending paragraph (f) by inserting after the word "Acquisitions" the sentence "The method for each appraisal shall be determined by the authorized officer after consideration of the complexity of the case, the proposed method of sale and other factors pertinent to assuring a fair market value determination."

§ 2711.1 [Amended]

3. Section 2711.1-1 is amended by adding a new paragraph (c) to read:

C. Nominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically identify the tract being nominated or requested and the reason for proposing sale of the specific tract.

§ 2711.2 [Amended]

4. Section 2711.2-2 is amended by:

a. Revising paragraph (b) to read"

(b) Not less than 60 days prior to sale, the notice shall be sent to the Member of the United States House of

Representatives in whose district the public lands proposed for sale are located and the United States Senators for the State in which the public lands proposed for sale are located, the Senate and House of Representatives, as required by paragraph (f) of this section, to Governor of the State within which the public lands are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users." and

b. Renumbering paragraph (d) as paragraph (f) and inserting new paragraphs (d) and (e) to read:

(d) The publication of the notice of realty action in the Federal Register may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

(e) The notice published under § 1610.5 of this title may, if so designated in the notice and is the functional equivalent of a notice of realty action required by this section, serve as the notice of realty action required by paragraph (a) of this section and may segregate the public lands covered by the sale proposal to the same extent that they would have been segregated under a notice of realty action issued under paragraph (a) of this section.

5. Section 2711.1-3 is revised to read:

§ 2711.3 Sales requiring grazing permit or lease cancellations.

When lands are identified for disposal and such disposal will preclude livestock grazing, the sale shall not be

made until the permittees and lessees are given 2 years prior notification, except in cases of emergency, that their grazing permit or grazing lease and grazing preference may be cancelled in part. A sale may be made of such identified lands without cancellation of the permit or lease in part if the sale is conditioned upon continuance of the permit or lease after the sale. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for the fair market value of his/her interest in authorized permanent range improvements located on these public lands (See § 4120.6-6). The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 [Amended]

6. Section 2711.2(b) is amended by removing the word "law" and replacing it with the word "laws".

§ 2711.3 [Amended]

7. Section 2711.3-1 is amended by:

a. Revising the title to read:

§ 2711.3 Competitive bidding.

b. Amending paragraph (c) by removing from the second sentence the phrase "not less than one-fifth" and replacing it with the phrase "the amount required in the notice of realty action which shall be not less than 10 percent or more than 30 percent"; and by removing from the beginning of the third sentence the word "of" and replacing it with the word "or"; also by removing from the third sentence the word "drawing" and replacing it with the words "supplemental biddings; and removing the last sentence and replacing it with a new sentence to read: "The designated high bidders shall be allowed an opportunity to submit a supplemental bid."

c. Amending paragraph (d) by removing the phrase "30 days" and replacing it with the phrase "180 days" and by removing the word "30th" and replacing it with the phrase "up to the 180th".

§ 2711.3-2 [Amended]

8. Section 2711.3-2 is amended by:

a. Revising the title to read:

§ 2711.3-2 Modified bidding.

b. Amending paragraph (a)(1) by removing the period at the end of paragraph (ii) and replacing it with a

semicolon and the word "or" and by adding a new paragraph (iii) to read:

(iii) Offering to designated bidders of the first right of refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration;

c. Revising paragraph (b) to read:

(b) Where 2 or more designated bidders exercise preference consideration awarded by the authorized officer in accordance with paragraph (a)(1) of this section, such bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders shall be allowed to continue bidding to determine the high bidder.

d. Renumbering paragraphs (c) and (d) as paragraphs (d) and (e) and inserting a new paragraph (c) to read:

(c) Where designated bidders fail to exercise the preference consideration offered by the authorized officer in the allowed time, the sale shall proceed using the procedures specified in § 2711.3-1 of this title; and

e. Adding a new paragraph (f) to read:

(f) Sales shall be made in a manner followed by all commercial transactions. The authorized officer shall publish a notice of realty action in accordance with the procedures in § 2711.1-2 of this title. If the sale is to be made through a real-estate broker, the notice shall so state.

9. A new § 2711.3-3 is added to read:

§ 2711.3-3 Direct sales.

(a) Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to:

(1) A tract identified for transfer to State or local government or nonprofit organization; or

(2) A tract identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; or

(3) There is a need to recognize an authorized use such as an existing business which would be threatened if

the tract were purchased by other than the authorized user; or

(4) The adjoining ownership pattern and access indicate a direct sale is appropriate; or

(5) A need to resolve inadvertent unauthorized use or occupancy of the lands.

(b) Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by the same instruments as authorized in § 2711.3-1(c) of this title.

(c) Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(d) Acceptance or rejection of an offer to purchase the offered lands shall be in accordance with the procedures set forth in §§ 2711.3-1 (f) and (g) of this title.

§ 2711.5-3 [Removed]

10. Section 2711.5-3 is removed in its entirety.

Garrey E. Carruthers,
Assistant Secretary of the Interior.

(FR Doc. 83-32433 Filed 12-8-83; 8:45 am)

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

(Docket No. FEMA-6576)

National Flood Insurance Program;
Proposed Flood Elevation
Determinations; Connecticut, et al.

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mazrik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed

to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/country	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Weston, town, Fairfield County	Saugatuck River	Downstream of Davis Hill Road	*120	*118
			Approximately 300 feet upstream of Davis Hill Road	*121	*120
			Confluence with Jennings's Brook	*125	*124
			Downstream of footbridge located 700 feet upstream of Cobble Dam	*127	*126
			Confluence with Saugatuck River	*125	*124

Maps available for inspection at the Town Hall, Weston, Connecticut.

Send comments to Honorable Susan Hutchinson, First Selectwoman of Weston, P.O. Box 1007, Weston, Connecticut 06883.

Idaho	Coastal areas	County	(unincorporated)	Wetters Gulch	50 feet upstream from the centerline of 15th Street	(1)	*2,187
				French Gulch	40 feet upstream from the centerline of Galena Road	(1)	*2,184

APPENDIX D

§ 2130.1-2130.3 [Reserved]

§ 2130.4 Acquisition of lands in King Range Conservation Area.

§ 2130.4-1 Purchase.

If the Secretary of the Interior determines that the acquisition of land or interest in land is desirable for consolidation of public lands within the Area he may acquire land or interest in land within the King Range National Conservation Area by purchase with donated funds appropriated specifically for that purpose.

Subpart 2137—Condemnation of Lands or Interests in Lands

§ 2137.0-7 Appraisals.

Prior to initiation of condemnation proceedings, the property will be appraised pursuant to approved Bureau procedures to determine its fair market value and an offer made to purchase it at that appraised price.

§ 2137.0-8 [Reserved]

§ 2137.0-9 Reasons for condemnation.

Incompatible use. The power of eminent domain will be exercised only if the Secretary finds that the use to which the land is being put is incompatible with the purposes of the King Range National Conservation Area Act or the management plan prepared in accordance with the Act, and if efforts to acquire the land by other means have failed.

Group 2200—Exchanges

PART 2200—EXCHANGES—GENERAL PROCEDURES

Subpart 2200—Exchanges—General

Sec.

2200.0-1 Purpose.

2200.0-2 Objective.

2200.0-3 Authority

2200.0-4 Responsibilities.

2200.0-5 Definitions.

2200.0-6 Policy.

2200.0-7 Scope.

2200.1 Lands subject to disposal by exchange.

Exchange Regulations

Sec. 43 CFR, Part 2200

2200.2 Lands subject to acquisition by exchange.

2200.3 Lands acquired by exchange.

Subpart 2201—Exchanges—Specific Requirements

2201.1 Notice of realty action.

2201.2 Proposals.

2201.3 Valuations.

2201.4 Legal description of property.

2201.5 Final requirements.

2201.6 Exchange agreement.

2201.7 Acceptance of conveyance and removal of improvements.

2201.8 Title evidence.

Subpart 2202—Exchanges—National Forest Exchange

2202.1 Applicable regulations.

AUTHORITY: Secs. 205, 206, 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740).

SOURCE: 46 FR 1638, Jan. 6, 1981, unless otherwise noted.

Subpart 2200—Exchanges—General

§ 2200.0-1 Purpose.

This Part 2200 sets forth procedures for the exchange of public lands or interests therein for non-Federal lands and interests therein.

§ 2200.0-2 Objective.

The objective is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in Part 1601 of this title, through use of the exchange authority granted by the Federal Land Policy and Management Act of 1976. When considering public interest, full consideration will be given to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. There must also be a finding that the values and objectives which Federal lands and interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands and interests and the public objectives they could serve if acquired.

§ 2200.0-3

§ 2200.0-3 Authority.

These regulations are issued under the authority of sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740), and apply to any proposed exchange filed after October 21, 1976.

§ 2200.0-4 Responsibilities.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means Secretary of the Interior.

(b) "Person" means any person or entity legally capable of conveying and holding land and interests therein, under the laws of the State within which the land or interests therein are located. A person shall be a citizen of the United States, or in the case of a corporation, shall be subject to the laws of any State or of the United States.

(c) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Lands" means any land and interests therein.

(e) "Notice of realty action" means publication of a determination as set out in § 2201.1 of this title, that certain lands are suitable for disposal by exchange under specified laws.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Exchange" means a conveyance of lands and interests therein from the United States to a person at the same time there is a conveyance of lands and interests therein from the person to the United States.

(h) "Equal value exchange" means an exchange of lands, or interests

Title 43—Public Lands: Interior

therein, where valuations show that the interests being exchanged are of equal value.

(i) "Money equalization" means balancing the differences in the equal value of the properties by a money payment made by either party.

(j) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of the Interior of regulatory authority as conferred by law to allow for the orderly administration of the public lands.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

§ 2200.0-6 Policy.

(a) Exchange proposals shall meet policy objectives of the Federal Land Policy and Management Act and shall comply with all applicable Federal statutes, regulations and executive orders.

(b) Exchanges of interests in lands shall be considered on a case-by-case basis.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands and interests therein administered by the Secretary, through the Bureau of Land Management, except where an exchange is specifically authorized by Subparts 2212, Part 2240, Part 2250, and Subparts 2271, 2272, 2273 and 2274, noted in the regulations of Group 2200 of this title.

(b) Qualified requests for fee coal exchanges made under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in Subpart 3437 of this title shall be processed in accordance with this part, except as otherwise provided in Subpart 3437 of this title.

(c) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either Federal or non-Federal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is in conformance with the land use planning provisions contained in Subpart 1601 of this title.

(b) The public lands to be exchanged shall be located in the same State as the non-Federal lands or interests to be acquired.

(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment.

(d) As part of the consideration of whether public interest would be served by disposal of fee coal through exchange, the applicability of unsuitability qualifications of Subpart 3461 of this title to the Federal lands are relevant and will be applied.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Non-Federal lands and interests therein may be acquired only when their acquisition is consistent with the mission of the Department of the Interior. Both the non-Federal and public lands and interests therein shall be located in the same State.

(b) Acquisition of lands by exchange under this part may be made only if their acquisition is in conformance with land use planning provisions under Subpart 1601 of this title.

(c) Unsurveyed school sections are considered as "non-Federal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived all rights to unsurveyed sections used in the exchange.

§ 2200.3 Lands acquired by exchange.

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws of application for sale, entry or mineral leasing. A notice of their availability shall be published in the **FEDERAL REGISTER**. The notice shall state the date and time of their availability and the forms of authorization. Such availability shall be noted on the public land records.

(b) Lands and interests in lands acquired by exchange within a grazing district established under section 1 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), shall become a part of that district.

(c) Lands and interests in lands acquired within the National Forest System may be transferred to the Secretary of Agriculture by the Secretary and thereby become National Forest System lands subject to all laws and regulations applicable to other National Forest System lands.

(d) Lands and interests in lands acquired under provisions of section 206 of the Federal Land Policy and Management Act and located within the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or any other Federal land System established by an Act of Congress may be transferred by the Secretary to the appropriate agency for administration in accordance with the laws, rules and regulations applicable to that system.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Notice of realty action.

(a) A notice of realty action offering to exchange certain lands which have, through the public land use planning process of the Bureau of Land Management, been determined suitable for acquisition and disposal by exchange, shall be published in the **FEDERAL REGISTER** and shall be published once a week for 3 weeks thereafter in a newspaper of general circulation in the

area of the lands to be acquired and the lands to be disposed of by a proposed exchange. The notice shall provide 45 days after the date of issuance for comments by the public and interested parties. Comments on the notice of realty action shall be sent to the office issuing the notice. The notice published under § 1601.6-3(b)(1) of this title may, if so designated in the notice, serve as the notice of realty action required by this section and may segregate the public lands covered by the exchange proposal to the same extent that they would have been under a notice of realty action issued under this section if so stated in the notice. Any such notice given under § 1601.6-3(b)(1) shall be published and distributed under the requirements of this section and provide a 45-day comment period.

(b) The publication of the notice of realty action on an exchange proposal in the *FEDERAL REGISTER* may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the *FEDERAL REGISTER* of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. Any prior reserved Federal interests in the non-Federal lands may be segregated by the notice of realty action to the same extent the public lands are segregated.

(c) When the exchange of a tract of public lands requires the cancellation of a grazing permit or lease in its entirety notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (see 43 CFR 4110.4-2(b)). The publication of a notice of realty action shall constitute

notice to the grazing permittee or lessee if notice has not been previously given. No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized improvements have been met.

(d) The notice of realty action shall list all reservations to be included in the conveyance to and from the United States, including, where the Federal lands are encumbered by a mineral lease or permit, a reservation to the United States for the duration of the mineral lease or permit of the mineral or minerals covered by the lease or permit.

(e) The notice of realty action shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographic area within which the public lands are located and the head of any political subdivision having administrative or public services responsibility in the geographic area within which the public lands are located not less than 60 days prior to the exchange of titles. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users.

(46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983)

§ 2201.2 Proposals.

(a) Exchange proposals may be submitted by a person who owns lands or interests in lands, by non-Federal entities, by Federal departments or agencies or by the Bureau of Land Management. When an exchange proposal is made to the Bureau of Land Management, it shall be made in writing to the District Manager for the district in which the Federal lands are located. The authorized officer may publish a notice of initiation or receipt of an exchange proposal within 10 days of initiation or receipt of such proposal.

(b) An exchange proposal may, if found by the authorized officer to be in accordance with Bureau of Land Management policies, programs and the regulations in this part, be the

basis of publication of a notice of realty action as provided in § 2201.1 of this title.

(c) Where an exchange proposal is not accepted by the authorized officer and made the basis of a notice of realty action, the proponent shall be so advised in writing with a statement of the reason(s) for the non-acceptance and advised of the availability of a protest to the State Director.

(d) If requested in writing by the proponent within 30 days of the mailing of the notification of non-acceptance, the decision of non-acceptance of the authorized officer shall be reviewed by the State Director to determine if it is in accordance with the Bureau of Land Management policies, programs and the regulations in this part. Such review shall be completed by the State Director and the proponent notified in writing of the action taken within 60 days of receipt of the written request by the State Director.

(e) Where 2 or more exchange proposals are submitted covering the same public lands, in whole or in part, the authorized officer shall review the proposals and advise the exchange proponents as to the acceptance or nonacceptance of their proposals in the same manner as specified in paragraphs (b) through (d) of this section.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

§ 2201.3 Valuations.

(a) No exchange shall be deemed suitable if it is not an equal value exchange; however, such exchange may include a money equalization pursuant to § 2201.5(c) of this title.

(b) Appraisals to determine whether the lands and interests in lands to be exchanged are of equal value shall be in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions."

(c) The authorized officer shall use the "Methodology for an Alternative Method of Determining the Value of Lands for Exchange Containing Oil Shale and Associated Minerals," a guidance document for determining equal value in lieu of an appraisal to determine equal value only for lands

containing oil shale and any associated minerals when he/she determines an appraisal to be inappropriate. The Director, Bureau of Land Management, shall review the use of this alternative methodology to determine if it has been properly applied in lieu of an appraisal. When the authorized officer uses the procedures contained in the methodology described herein to determine equal value, the notice of realty action issued in connection with the exchange shall state that the methodology procedures are being used pursuant to a determination by the Director.

[48 FR 16888, Apr. 20, 1983]

§ 2201.4 Legal description of property.

The public lands and interests in public lands proposed for exchange shall be properly described and locatable under the survey laws and standards of the United States. The non-Federal lands may be described as part of a surveyed section or by a metes and bounds survey, tied to a township, range, meridian, and State, or may be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2201.5 Final requirements.

At the end of the period provided in the notice of realty action and upon a determination by the authorized officer that a particular exchange is acceptable, the owner or holder of the non-Federal land and interest shall provide the following:

(a) *Evidence of title acceptable to the authorized officer.* (1) For private land owners, any one of the documents set forth in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.) that is acceptable to the authorized officer.

(2) For States, if the property was ever held in private ownership, a certificate of title as prescribed in § 2201.5(a)(1). If lands and interests in lands have not been in private ownership, either of the following shall be acceptable evidence of title: (i) A certification by the appropriate State officer that the property has not been sold or otherwise encumbered and a

certification under the official seal of the recorder of deeds or other appropriate State officer that no instrument has been recorded or filed that would encumber title to the property or (ii) a certification by an abstractor or abstract company that no instrument has been recorded or filed that conveyed or would encumber title to the property.

(b) *Conveyance documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1968 ed.). (1) Private property owners shall submit a warranty deed or other document of conveyance which meets Department of Justice title standards for property acquired by the United States conveying the privately-owned property to the United States, and stating that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. Deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located.

(i) Any revenue stamps required by State law shall be affixed to the deed and cancelled.

(ii) A deed executed by an individual grantor shall disclose the marital status of the grantor. A married grantor shall join with the spouse to execute a deed to bar any right of courtesy, dower, community interest or any other claim to the property conveyed unless written evidence is submitted that shows that under the laws of the State where the conveyed property is located the grantor's spouse has no present or prospective interest in the lands.

(iii) Any deed executed by a partnership, association or other entity other than a corporation shall corroborate that the deed is executed pursuant to the articles of association or partner-

ship or other similar document creating the entity. If there are none or if signing authority is not provided for in the document, the deed shall be signed by each member of the entity and each signor shall furnish a statement that he/she is a member. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(iv) Any deed executed by a corporation shall corroborate that the deed is executed pursuant to its bylaws or a resolution or order by the corporation's board of directors or other governing body. A copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(2) States shall submit a deed of conveyance that includes a statement that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. The deed shall be executed, acknowledged and recorded in accordance with the laws of the State. A certification that the State officer executing the conveyance is authorized to do so under State

law shall accompany the deed. When unsurveyed sections are used as exchange lands by a State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(c) *Taxes and equalizing money.* (1) Where taxes constitute a lien on the non-Federal property, the owner of the non-Federal land or interest shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount at least 20 percent in excess of taxes paid on the property for the previous year or assure payment of taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the non-Federal lands and interests.

(2) A money payment for equalization of value shall not exceed 25 percent of the value of the public lands and interests being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible.

§ 2201.6 Exchange agreement.

An exchange agreement may be entered into between the Bureau of Land Management, as represented by the authorized officer, and exchange party. The agreement shall identify the lands or the estate to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms, conditions, covenants and reservations.

§ 2201.7 Acceptance of conveyance and removal of improvements.

(a) *Acceptance of conveyance.* If the title and other evidence required of the owner of the non-Federal lands and interests in lands are in conformity with the law and regulations, the authorized officer may accept title to the non-Federal property conveyed to the United States. A patent or other document of conveyance for the property exchanged shall be issued and a notice of the issuance of said conveyance documents shall be published in the FEDERAL REGISTER. The Governor and the head of local governments

shall be immediately notified of the issuance of conveyance documents for public lands located within their respective jurisdictions. A money payment, if required to equalize values, shall be made by the appropriate party prior to or at the date of conveyance.

(b) *Removal of improvements.* If any buildings, fencing or other movable improvements owned or erected by a party to an exchange on the non-Federal lands conveyed are not a part of the exchange proposal, the party may remove such improvements from the lands upon receipt of notice that the exchange has been approved: *Provided*, That such removal is accomplished within the period specified in the notice or any reasonable extension that may be granted by the authorized officer.

(c) *Other improvements.* Where public lands to be conveyed under this part contain authorized improvements, other than those identified in § 2201.1(c) or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.8 Title evidence.

(a) If no exchange agreement is entered into, no action taken prior to issuance of patent or other document of conveyance shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(b) If a party to a prospective exchange has submitted title evidence in connection with an exchange and processing of the proposal is terminated and the exchange will not be proposed again in the near future, the title evidence shall be returned to the exchange party. Where the deed has been recorded, a quitclaim deed for the land conveyed to the United States shall be issued under section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

APPENDIX E

APPENDIX E - Glenwood Springs, Colorado, Final Resource Management Plan: Land Tenure Adjustments Criteria. **NOTE:** Although this document states "extensive changes" were made between the Draft and Final Plans, this was not the case; only those items bracketed and marked "CHANGE" were added. However, the tracts identified as Disposal Zones were drastically reduced from the Draft to Final Plan.

APPENDIX G

CONSIDERATIONS USED IN DETERMINING LAND TENURE ADJUSTMENTS

Appendix G has been reprinted because of the extensive changes made between the DEIS and FEIS.

RETENTION OR MULTIPLE USE ZONE

Definition

Tracts or combinations of tracts of public land or interests in land that are retained in public ownership and are managed under the principles of multiple-use and sustained yield.

Considerations

- Well-blocked tracts of public land.
- Tracts controlling access to other public lands (except for easements or patent reservations).
- Areas where community expansion is not expected.
- Manageable tracts (defined by such factors as access, resource values, compatibility with BLM mission).
- Areas where public demand for disposal is minimal.
- Areas valuable for resource programs and protection/management.
- Areas identified in state and local governments' land-use plans as suitable for public ownership.
- Areas not in conflict with existing planned intensive development.

Exceptions

- Recreation and public purpose (R&PP) applications for patents.
- Resolution of unintentional trespass both occupancy and agricultural.

- Selection by the state of in-lieu lands.
- Critical needs for energy development.
- Lands critical for community expansion.
- Mining claims to patent.
- Land exchanges where the public value of the land that is acquired meet or exceed the public value of the land that is disposed of.
- Land identified in future surveys, including omitted land, where one or more of the disposal zone considerations are met.
- Land adjacent to existing agricultural, residential, industrial, or commercial land where public ownership interfaces with the logical development of that land.
- Land containing crucial big game winter range or other resources whose values could best be managed by other federal or state agencies for public use.

CHANGE

COOPERATIVE MANAGEMENT (WITHIN RETENTION ZONE)

Definition

Tracts or combinations of tracts of public land or interests in lands which may or may not be interspersed with private, state, or other agency lands or interests in lands, where several agencies have varying responsibilities for management.

Considerations

- Special withdrawals and reserves, i.e., Naval Oil Shale Reserve.
- Broken land pattern with similar management goals among federal, state, or private owners.
- Public land needed to support or add to other agency or state needs, i.e., Colorado River corridor.

APPENDIX F

ISSUE 7: LAND TENURE ADJUSTMENT PLANNING CRITERIA

Disposal Criteria:

1. Size of the tract and ownership pattern of the area. (320 acres or less.)
2. Proximity of the tract to population centers.
3. Lands which have been identified for specific uses by outside interest groups.
4. Lands with no significant recreational values, wildlife habitat, paleontological or cultural values.
5. Lands where water quantities are such that they don't benefit agriculture or wildlife.
6. Lands which do not contain government improvements or where such improvements are of low value.
7. Lands identified by communities for expansion and development needs.
8. Lands with no physical or legal access.
9. Lands with mineral/surface split estate.
10. Consistency with other federal, state, local or tribal land use plans.
11. Lands with a history of long range agricultural trespass.
12. Lands which traditionally have not been leased for grazing purposes.
13. Lands with potential for intensive agricultural uses.

Retention Criteria:

1. Size of the tract and ownership pattern.
2. Lands withdrawn to BLM or other agencies.
3. Lands with mineral development potential and/or mining claims.
4. Lands with significant recreational values, wildlife habitat, paleontological or cultural values.
5. Presence of water in usable quantities for livestock grazing or agriculture, or to benefit wildlife.
6. Lands within a wilderness study area.
7. Lands containing valid existing water rights.
8. Lands with valuable government improvements present.
9. Lands with physical and legal access.
10. Lands adjacent to the Yellowstone River.

APPENDIX G

APPENDIX 1.6: STATE DIRECTOR GUIDANCE LAND PATTERN REVIEW CRITERIA
(TAKEN FROM STATE DIRECTOR GUIDANCE FOR RESOURCE MANAGEMENT PLANNING
IN MONTANA AND THE DAKOTAS, APRIL, 1983).

LAND PATTERN REVIEW CRITERIA

The public lands subject to these criteria are those lands, minerals, or interests in land administered by BLM. Criteria are presented to assist in categorizing the public lands for retention, disposal, or further study. Criteria are also provided to facilitate the selection of lands to be received in exchanges or other types of acquisition. The criteria range from specific to general and are designed to provide direction for statewide consistency while allowing the manager flexibility in identifying circumstances which dictate the category in which lands can be placed.

- A. Retention - These are lands which will remain in public ownership and be managed by BLM. BLM is interested in exchanges to improve manageability of areas important with public values. Although the underlying philosophy is long term public ownership, minor adjustments involving sales and exchanges of lands may occur when the public interest is better served.
 1. Areas of national environmental significance, including but not limited to:
 - a. Wilderness, Wilderness Study Areas and Former WSAs being Studied for Protective Management
 - b. Wild & Scenic Rivers
 - c. National Scenic & Historic Trails and Study Trails
 - d. National Conservation Areas
 - e. Wetlands and Riparian Areas under Executive Order 11990.
 - f. Other Congressionally Designated Areas and Study Areas
 - g. Wild Horse Management Areas
 - h. Areas of Critical Environmental Concern
 2. Areas of national economic significance including, but not limited to:
 - a. Designated Mineral Resource Areas where disposal of the surface would unnecessarily interfere with the logical development of the mineral estate, e.g., surface minerals, coal, phosphate, known geologic structures, etc.
 - b. Public lands containing strategic minerals needed for national defense.
 3. Public lands used in support of national defense, including but not limited to national Guard maneuver areas.
 4. Areas where management is cost-effective or lands containing other important characteristics and public values which can best be managed in public ownership by BLM, including but not limited to:
 - a. strategic tracts along rivers, streams, lakes, ponds, springs, and trails
 - b. community watersheds and/or floodplains
 - c. wildlife priority areas as identified in Appendix 1
 - d. important hunting or fishing areas
 - e. recreation sites and areas
 5. Lands with a combination of broad multiple use values which dictate they should be retained in public ownership and managed by BLM.
 6. Areas where future plans will lead to further consolidation and improvement of land patterns and reduce the costs of management.
 7. Areas which the general public, state and local government consider suitable for permanent public ownership.
 8. Public lands withdrawn by the BLM or other federal agency for which the purpose of the withdrawal remains valid and the resource uses can be managed by BLM concurrently.
 9. Public lands that contribute significantly to the stability of the local economy by virtue of federal ownership.
 10. Public lands which provide public access and contain previously mentioned public values which, when considered together, warrant their retention.
- B. Disposal - These are lands identified for potential removal from public ownership through sale or exchange, or through transfer to federal, state, county or local public entities. In addition to land internally identified for disposal, BLM will respond to proposals from the public. Disposal decisions will be made in the public interest based upon the following criteria.
 1. Lands specifically identified through land use plans for sale, exchange, transfer or Recreation and Public Purposes Act applications.
 2. Lands of limited public value.
 3. Widely scattered parcels which are difficult for BLM to manage with anything beyond minimal custodial administration.
 4. Lands with high public values proper for management by other federal agencies, or state or local government. Incorporate, when applicable, the objectives of the Secretary's Good Neighbor Policy.*
 5. Lands which will serve important public objectives (such as community expansion) as provided in FLPMA Sec. 203(a)(3).

*The Secretary's program inviting state governors to participate in the nomination of federal lands needed by state and local governments and to expedite their transfer under the Recreation and Public Purposes Act.

APPENDIX H

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

Robert Burford
Director (202)
Bureau of Land Management
1800 C Street NW
Washington, DC 20240

January 5, 1983

Dear Mr. Burford:

On behalf of the Bull Mountain Landowners Association (BMLA) and the Northern Plains Resource Council, of which BMLA is an affiliate, I am sending you the enclosed protest of the Billings Resource Area Resource Management Plan.

Please do not hesitate to write or call if you or any of your staff would like to discuss the protest and our reasons for filing it. We seek a rapid resolution of our differences with BLM over this RMP.

Thank you for your careful consideration of this protest and the issues raised.

Sincerely,

(signed)
R-T

Bob Tully
President
Bull Mountain Landowners Association

(by John D. Smalley)

attachments

PROTEST

of the

Billings Resource Area Resource Management Plan

Submitted by the

Bull Mountain Landowners Association

and the

Northern Plains Resource Council

Submitted January 5, 1983

Pursuant to 43 CFR 1610.5-1 of BLM's planning regulations, the Bull Mountain Landowners Association and the Northern Plains Resource Council hereby protest the Billings Resource Area Resource Management Plan.

I. This protest is filed by Bob Tully, President, Bull Mountain Landowners Association (BMLA), P.O. Box 216, Roundup, Montana, 59072, on behalf of the Bull Mountain Landowners Association, and by the Northern Plains Resource Council, 419 Stapleton Building, Billings, Montana, 59101.

The Bull Mountain Landowners Association is affiliated with the Northern Plains Resource Council.

II. STATEMENT OF ISSUES BEING PROTESTED

A. BMLA and NPRC protest BLM's plans for federal coal leasing and federal-for-fee coal exchanges in the Bull Mountain Coal Field.

B. BMLA and NPRC protest BLM's plans for federal-for-fee coal exchanges for underground minable coal in the Billings Resource Area.

C. BMLA and NPRC protest the categorization of lands as suitable for sale in the Billings Resource Area, and the categorization of subsurface minerals as suitable for exchange in the Billings Resource Area.

D. BMLA and NPRC protest the inadequate analysis of the environmental impacts of coal leasing decisions and federal-for-fee coal exchange decisions and subsequent mining in the Bull Mountain coal field, and BLM's failure to provide for mitigation or threshold levels of mining in the Bull Mountain coal field.

E. BMLA and NPRC protest the RMP/EIS's failure to analyze the impacts of federal-for-fee coal exchange decisions and subsequent mining in the Billings Resource Area for "underground minable" coal, and BLM's failure to provide for mitigation or threshold levels for mining in the Billings Resource Area.

F. BMLA and NPRC protest the RMP's failure to analyze and discuss the environmental impacts of land sales and mineral exchanges in the Billings Resource Area.

G. BMLA and NPRC protest BLM's failure to comply fully with applicable laws and regulations related to the coal leasing, exchange, and land tenure adjustment decisions in the RMP/EIS and the environmental analysis of those decisions in the EIS.

H. BMLA and NPRC protest the BLM's failure to allow public comment on the decision in the RMP to find all underground minable coal in the Billings RMP suitable for exchange.

I. BMLA and NPRC protest the BLM's failure to allow public comment on the RMP decision to find lands suitable for sale and exchange in the Billings Resource Area.

J. BMLA and NPRC protest BLM's failure to adequately and meaningfully respond to many of the comments on the draft RMP/EIS submitted by the public, including members of BMLA and NPRC.

III. STATEMENT OF THE PARTS OF THE PLAN BEING PROTESTED

A. BMLA and NPRC protest the Proposed Action for Coal, as described on p. 21-23 of the Final RMP/EIS document, and the underlying analysis for this part of the plan elsewhere in the RMP/EIS document, and the rationale.

B. BMLA and NPRC protest any action by BLM to implement the proposed action for coal.

C. BMLA and NPRC protest the proposed action for Land Tenure Adjustment, as described on pp. 24-25 of the Final RMP/EIS document, the rationale for the proposed action, and the underlying analysis for this part of the plan elsewhere in the RMP/EIS.

D. BMLA and NPRC protest any action by BLM to implement the proposed action for land tenure adjustment.

IV. DOCUMENTATION OF ISSUES SUBMITTED DURING THE PLANNING PROCESS BY THE PROTESTING PARTIES

Members of the Bull Mountain Landowners Association and the Northern Plains Resource Council (Steve Charter, Jeannie Charter, Bob Tully, and Tom Tully) testified in Billings at BLM's formal public hearings on June 1, 1983. A transcript of this testimony is printed in the final EIS.

The Northern Plains Resource Council submitted written comments on the draft RMP and EIS on July 15, 1983.

BMLA President Bob Tully, Joan Tully, and members of the NPRC staff met with BLM Billings Resource Area staff the week of July 18 in the Billings Resource Area Office.

All of the issues protested herein were raised in testimony, in NPRC's written comments, and in the BMLA/NPRC meeting with BMLA staff, with the following exceptions:

1. BLM's failure to allow public comment on the decision to find all underground minable coal suitable for exchange.
2. BLM's failure to allow public comment on the decision to find lands outside the Land Tenure Adjustment Area as suitable for sale in the Billings Resource Area.
3. BLM's failure to adequately respond to comments submitted on the draft RMP/EIS.

These issues could not have been raised prior to the filing of this protest, because the decisions referred to represented changes from the draft RMP/EIS. Of course, the issues of coal leasing and exchange, and land tenure adjustment, were raised and discussed in detail in the testimony, comments, and meetings cited above.

Similarly, BLM's failure to adequately respond to comments on the draft did not become an issue prior to publication of the final EIS, since BLM's responses were not available to the public prior to distribution of the final EIS.

V. STATEMENT OF REASONS EXPLAINING WHY THE STATE DIRECTOR'S DECISION IS WRONG.

The State Director's decision to approve the proposed plans for coal leasing and exchange and for land tenure adjustment is wrong, generally, because the BLM staff preparing the RMP and EIS mischaracterized or misunderstood the nature and importance of the decisions made in the plan. The State Director and BLM staff failed to acknowledge that the decisions to find coal suitable for lease or exchange and the decision to find public land suitable for sale are more than just decisions to "keep BLM's management options open".

Those decisions are much more. They are decisions that coal leasing or exchange (in the case of coal) or sale (in the case of land tenure adjustment) are the "highest and best use" of these lands, as compared to all alternative uses.

The State Director and BLM staff failed to adequately consider alternatives, analyze the impacts of alternatives and proposed actions, made wrong decisions, and failed to respond adequately to public comments in large part because of the failure just described. For example, BLM effectively admitted that the RMP/EIS analysis of the impacts of its coal decisions is far short of the requirements of the National Environmental Policy Act, when it stated (on p. 272 of the final RMP/EIS):

Because so much is yet unknown about future coal development in the area, the resource area staff attempted to leave management options open...

As a result of the understatement of the importance of the decisions made in the plan and the woefully inadequate analysis of alternatives and impacts in the RMP/EIS, the decisions in the RMP are without adequate foundation and analysis. More specific reasons that the State Director's decisions are wrong follow.

A. Adoption of the Proposed Plan for Coal

1. The Director's decision to adopt the proposed plan for coal (leasing and exchange) is wrong because it reverses the findings and decisions of the previous land use plan without any justification. No new facts, environmental or multiple use analysis are presented in the RMP/EIS to warrant changing the previous land use decision or to modify or refute the analysis in the previous land use plan.

The only evidence and analysis in the RMP planning process related to the existing plan was provided by commenters, and that evidence and analysis supported and strengthened the decisions in that plan (the 1973

Bull Mountain and Buffalo Creek Land Use Recommendations, or "1973 MFP"). The State Director's decision is wrong because it ignored and runs counter to the evidence and analysis presented in the 1973 MFP and by the public concerning that MFP.

2. The decision to find coal acceptable for further consideration for leasing or exchange is wrong because the unsuitability criteria (43 CFR 3461) were not, for the most part, applied at all in the RMP. While BMLA and NPRC recognize that application of some criteria may be postponed when sufficient inventory data can not be collected in time to apply the criteria during land use planning, the failure of BLM to even gather data, let alone apply criteria, is so pervasive as to violate the clear intent and the letter of section 522(a)(5) (and (b)) of the Surface Mining Control and Reclamation Act (SMCRA), which reads in part:

Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning...

The failure of the plan to more fully apply the criteria during land use planning also violates 43 CFR 3461.3-1(a)(1)-(2). See also 43 CFR 1610.7-1(a)(1).

Moreover, even where deferral of the application of particular criteria in some areas might have been justified due to inventory shortfalls, the RMP/EIS fails to disclose the reasons for the failure to apply the criteria, fails to disclose when, during activity planning, the criteria will be applied, and fails to disclose if, how, or when the application of criteria will be subject to public review and comment. All of these failures are direct and clear violations of BLM's regulations for applying the unsuitability criteria during land use planning, at 43 CFR 3461.3-1(b)(1), as BLM was warned and notified in NPRC's comments on the draft RMP/EIS.

3. The decision to find areas of the Bull Mountain coal field suitable for further consideration for leasing or exchange is wrong because the RMP/EIS completely fails to assess the technological or economic feasibility of reclamation as required by section 522(b) of SMCRA. The final RMP/EIS explicitly admits this failure (p. 271) where BLM states "it is neither feasible nor appropriate to attempt to analyze in detail potential reclamation problems at the RMP stage." Under 522(b), such analysis is not only appropriate, but required. The RMP does not even identify, let alone "analyze in detail", potential reclamation problems--even those identified in the previous land use plan for the Bull Mountains.

4. The decision to find coal suitable for further consideration for leasing is wrong because surface owner opposition to leasing in the entire area of the Bull Mountain coal field is significant. None of the coal in the area should be considered for lease due to this fact. The RMP's exclusion of the exact lands for which surface owners expressed opposition to leasing and only those lands is insufficient.

Section 714 of SMCRA, subsection (d), reads in pertinent part:

In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits...the Secretary shall consult with any surface owner....The Secretary shall, in his discretion but to

the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

BLM's regulations implementing section 714(d) require, at 43 CFR 3420.1-4(e)(4)(ii):

Where a significant number of surface owners in an area have expressed a preference against mining those deposits...that area shall be considered acceptable for further consideration only for development by underground mining techniques. (Emphasis added.)

It is plain from the above language that entire areas--that is, the entire Bull Mountain coal field in this case--must be eliminated from consideration when opposition from surface owners within that area is significant. The RMP/EIS, in contrast to the clear requirements of law, eliminated only the coal directly under surface owners who opposed leasing. The RMP/EIS thus improperly equated "significant" with "unanimous". SMCRa and implementing regulations plainly contemplate the elimination of "areas", not simply the coal underlying the property of opposed surface owners.

The decision fails to implement the Act's requirement that the Secretary refrain from leasing "to the maximum extent practicable." The RMP/EIS does not explain why excluding the entire Bull Mountain coal field as a result of significant surface owner opposition is not practicable.

5. The decision to find coal suitable for further consideration for leasing or exchange is wrong because the management decision was not made on the basis of multiple use and sustained yield, as required by section 102(a)(7) of the Federal Land Policy and Management Act (FLPMA). The RMP/EIS fails to insure that the public lands will be managed to protect and recognize the need for various resources as required and listed in section 102(a)(8) and section 102(a)(12) of that act. The analysis of the decision in the RMP/EIS reflects little if any of the principles of multiple use and sustained yield as they are defined by law in sections 103(c) and 103(h) of FLPMA.
6. The decision to find coal suitable for further consideration for leasing or exchange is wrong because the RMP/EIS does not meet the requirements of a comprehensive land use plan in section 202(c) of FLPMA. Specifically, the RMP/EIS decision does not reflect the use and observation of the principles of multiple use and sustained yield as required by section 202(c)(1); it did not give priority to designation of ACEC's as required by section 202(c)(3); it did not consider present and potential uses of the lands found suitable for lease or exchange, as required by section 202(c)(5); it did not consider the relative scarcity of values involved or alternatives as required by section 202(c)(6); and it did not weigh the long-term benefits against short-term benefits as required by section 202(c)(7).
7. The decision to find coal suitable for further consideration for leasing or exchange is wrong because the RMP/EIS fails to make, analyze, or employ (coal) resource demand forecasts in land use planning, as required by BLM's regulations for land use planning at 43 CFR 1610.4-4(c).

The RMP also failed to set, or even consider, threshold levels for either surface or underground coal development in the Bull Mountains, as

required by 1610.4-4(i) of those regulations.

The formulation of alternatives for the RMP/EIS was not in compliance with 1610.4-5. It is particularly noteworthy that only two distinct alternatives were considered--the preferred alternative and the existing management alternative. BLM was unable to explain the difference between the preferred, the "high level", and the "low level" management alternatives despite extensive and specific questions in public comments on the draft EIS. The three alternatives are, in fact, precisely the same. Moreover, no "subalternatives" within the preferred alternative were considered.

No estimation of the range of probable effects of leasing or exchanging and mining coal was made in the plan where the impacts were uncertain, as required under 1610.4-6. Intervals and standards for monitoring and evaluating these impacts (see 1610.4-9, 1610.4-10) are also absent from the plan.

8. The decision to find coal suitable for leasing or exchange is wrong because no multiple-use trade-offs between coal and any other resources were made in the plan, as required by FLPMA and at 43 CFR 3420.1-4(e)(3). While some other resources were mentioned in the RMP/EIS in relation to coal in the environmental analysis sections, conflicts between these resources and coal leasing were not explicitly identified in the plan, and no trade-off decisions (or the rationale for such decisions) are documented in the plan.

Moreover, the final RMP/EIS indicates that BLM has improperly deferred multiple-use analysis and decisions to the activity planning process due to inadequate data and analysis, in violation of all of the above-cited laws and regulations requiring such analysis and decisionmaking to occur during the land use planning process.

9. The decision to find coal suitable for further consideration for leasing and exchange is wrong because the RMP/EIS failed to consider the impact of the coal leasing and exchange decisions on "uses of adjacent or nearby non-federal lands and on non-public surface over Federally owned mineral interests" as required by 43 CFR 1601.0-8. As with the overall multiple use analysis, some or all of this analysis has been improperly deferred to activity planning or restricted due to failure to gather adequate data (see final RMP/EIS, p. 272, response #215).

10. The decision to find coal suitable for further consideration for leasing or exchange is wrong because the analysis of those decisions in the final EIS is totally inadequate under the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations implementing NEPA (40 CFR 1500). The EIS document fails to reflect the necessary requirements imposed by 43 CFR 1601.0-6, which makes it clear that approval of the Billings Resource Area RMP and all decisions in the plan are major federal actions. Environmental analysis of the decisions in the plan, including the coal decisions, must be accomplished in the planning process.

The EIS does not fulfill the requirements of the law and regulations regarding the analysis of the need for decisions and proposed actions, analysis of the impacts of decisions and alternatives, and several procedural requirements

of the NEPA process. For the purposes of brevity, the most pertinent NEPA regulations with which the RMP/EIS fails to comply will simply be listed here. The EIS fails to meet, in whole or in part, 40 CFR parts 1500.2(b) and (c); 1501.2(b); 1502.9(c)(1)(i); 1502.13; 1502.14(a); 1502.16 (most of the requirements of this section are not met by the EIS); 1502.22; 1502.23; and 1503.4 (especially subpart (a)(5)).

The EIS is especially deficient in the analysis and treatment of alternatives, and is in violation of 40 CFR 1500.2(e), 1501.2(c), 1502.2(d), and 1502.14(a) on this account. The EIS utterly fails to explain why the existing management alternative for coal was not adopted as preferable to the proposed plan.

A supplement to the draft EIS must be prepared because substantial changes were made to proposed actions in the preferred alternative in the draft EIS that are relevant to environmental concerns, as required by 1502.9(c)(1)(i) and the draft supplement must be circulated for comment as required by 1502.9(c)(4).

11. The decision to find lands suitable for exchange is wrong because the lands identified as suitable are not subject to exchange under FLPMA for the purposes discussed in the plan. "Consolidation" exchanges are not permitted under section 206(a) and the 1978 amendments to the Mineral Leasing Act. The arguments for this position were fully set out in NPRC's comments on the Notice of Realty Action for the "Meridian Exchange", which were incorporated by reference into our comments on the draft RMP/EIS. They are incorporated by reference here again, for the purposes of brevity.

12. The decision to find coal suitable for exchange is wrong because the areas found suitable were not so found "by tracts or areas" in the RMP, as required by section 202(a) of FLPMA. Rather, lands were found suitable for exchange on a broad and geographically undefined basis. Neither FLPMA, FCLAA, or FLPMA or FCLAA regulations provide for finding areas suitable for "lease or exchange", as was done in the plan. Rather, "the major land use planning decision shall be the identification of areas acceptable for further consideration for leasing..." (emphasis added).

13. The decision to find coal suitable for exchange is wrong because the RMP/EIS contains no evidence that eventual disposal would be "in conformance with the land use planning provisions contained in subpart [43 CFR] 1601...." as required by 43 CFR 2200.1(a). The BLM's exchange regulations clearly contemplate a detailed analysis of the suitability and the benefits of exchanging any lands found to be suitable for exchange, as may be deduced from reading the preamble to those regulations. The RMP/EIS fails to do this, providing instead merely a general, unsupported assertion that exchange of any lands might be appropriate. If this were all FLPMA and implementing regulations required, those requirements would be pointless. Merely saying that lands are suitable for exchange is not sufficient to make them so.

14. The decision to find coal suitable for exchange is wrong because the RMP/EIS fails to provide for the acquisition of adjacent private coal (necessary for the disposal of any lands by exchange for consolidation purposes) through exchange, or to find any coal suitable for such acquisition in the land use plan as required by 43 CFR 2200.2(b).

15. The decision to find coal suitable for exchange is wrong because no multiple use analysis or trade-off decisions were made prior to finding

lands suitable for exchange, as required by the sections of FLPMA and FLPMA regulations already noted, and by 43 CFR 2200.1(a).

16. The decision to find coal suitable for exchange is wrong because it implements a new national BLM policy that has not been subject to programmatic NEPA review or to public review and comment as required by NEPA and by section 309(e) of the Federal Land Policy and Management Act, respectively. Moreover, procedures and methods of determining the public interest for the type of exchanges allowed by the plan do not exist.

17. The decision to find all underground minable coal suitable for exchange is wrong for all of the reasons cited above regarding the decision to find coal suitable for leasing or exchange, and for the following reasons:

a) The decision to find underground minable coal suitable for exchange was not made in the draft RMP/EIS, thus denying the public the right to comment on the decision and analysis before a final decision was made. (The final RMP/EIS does not even highlight the change in the proposed action section, as was done for other changes in the final, although the decision potentially affects hundreds of millions of tons of coal.)

b) The unsuitability criteria were not applied at all to underground minable coal found suitable for exchange, in violation of 43 CFR Parts 3461 and 2200.

c) No maps, land descriptions, or any other display of the underground coal found suitable for exchange can be found anywhere in the RMP/EIS, in clear and obvious violation of section 102(a) of FLPMA and 43 CFR 2200 regulations.

d) No multiple-use analysis or trade-off decisions for the underground minable coal found suitable for exchange was done or documented in the RMP/EIS.

e) No environmental analysis was done of the impacts of exchange and ultimate development of underground minable coal anywhere in the EIS, despite the fact that the impacts (especially hydrologic and socioeconomic impacts) of potential underground minable coal exchange decisions are much larger than the impacts of the surface mining scenario considered (albeit inadequately) in the RMP/EIS. A supplemental draft EIS is necessary under 40 CFR 1500 regulations as discussed above.

f) Because no maps or other description of the underground minable coal found suitable for exchange is in the RMP/EIS, it is impossible to determine whether or not the decision is in compliance with section 203(c) of FLPMA.

Moreover, it is impossible to tell whether some of the coal found suitable for exchange as underground minable coal is or is not the same as coal found unsuitable for lease or exchange. Once exchanged, fee coal minable by underground mining methods may be submitted as part of a mine plan to be mined either by surface or underground mining methods, and BLM would not be able to restrict any "underground minable" coal from being submitted in a surface mining permit. Indeed, coal conservation and recovery laws would probably require that coal minable by either method be mined by surface mining methods. The decision here allows coal to be exchanged (for underground mining) that is unsuitable for leasing and surface

mining--yet which could be surface mined if exchanged. Obviously, the decision to find underground minable coal suitable for exchange potentially conflicts with RMP decisions, in that the same coal is considered suitable for exchange in one sentence and unsuitable in another.

18. The decisions to find coal suitable for lease or exchange is wrong because the RMP/EIS fails to adequately explain or justify these decisions in the face of overwhelming (virtually unanimous) public comment in opposition.

19. The decision to find coal suitable for exchange and suitable for lease is wrong because the rationale for that decision is wholly inadequate. The rationale advances no reason for choosing the proposed action over the existing management alternative other than the less than dispositive statement that this plan would allow compliance with the federal coal management program. The existing management alternative would also allow such compliance, so this statement provides no basis for deciding between alternatives, and certainly provides no argument for choosing the proposed plan over the existing management plan.

B. Land Tenure Adjustment Decisions

1. The State Director's decision to approve the proposed plan for land tenure adjustment is wrong because the decision to find lands suitable for disposal violates section 102(a) of FLPMA. Section 102(a) reads as follows:

The Congress declares that it is the policy of the United States that--

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest.... (Emphasis added).

The RMP/EIS improperly defers the determination required by section 102(a) and discussed further in section 203(a) past the land use planning stage, in violation of section 102(a)(1). The decision to find lands suitable for sale contains no discussion or findings for any "particular parcel" as required by section 102(a) and section 203(a). For lands outside of the so-called "land tenure adjustment area"--that is, for nearly all of the lands found suitable for sale in the plan--there is not even a legal description of the tracts in the plan, let alone any maps or findings to indicate which lands are suitable for sale or what findings regarding any individual parcel were made which meet the requirements of FLPMA.

2. The decision to find lands suitable for sale is similarly a violation of the principles in section 102(a)(7) of FLPMA, 102(a)(8), (10), and (12), and subsections 1, 2, 5, 6, and 7 of section 202(c) of FLPMA, because the management decision to find lands suitable for disposal was made without consideration of any of these principles, definitions, or requirements in the law.

3. The decision to find lands suitable for sale is wrong because the decision violates section 203(a) of FLPMA. Section 203(a) states that tracts of land may be sold only where the Secretary determines "as a result of land use planning required under section 202 of this Act" that the tract meets

one of three disposal criteria. The RMP contains no discussion or findings for any individual tract, parcel or acre of land found suitable for sale to indicate whether or not any of the lands in question does, in fact, meet these criteria. The clear letter of the law says that such discussions and findings must be made for individual tracts or parcels of land in the land use planning process, for any lands to be found suitable for sale. This process was not done--or at least there is no documentation of it--for any parcel in the Billings Resources Area found suitable for sale in the RMP.

4. The decision to find lands suitable for sale is wrong because it is impossible to determine (without legal descriptions of the lands found suitable for sale outside the so-called "land tenure adjustment area") whether such lands are in tracts that meet the acreage requirements of section 203(c) of FLPMA. The decision also violates section 203(e), inasmuch as the finding required under this section was not made for any parcel found suitable for sale.

5. The decision to find lands suitable for sale is wrong because absolutely no environmental analysis of the potential impacts of the decision was made in the plan, for any tract found suitable for sale or for all of the tracts collectively, in violation of all of the provisions of NEPA and NEPA regulations already cited under V(A)(9) above and related regulations in 43 CFR Part 1600.

6. The decision to find lands suitable for sale is wrong because the BLM failed to allow comment on the proposed action (which was only in the final RMP) to find over 40,000 acres of land outside the so called "land tenure adjustment area" suitable for sale. As with the decision finding underground minable coal suitable for exchange, a supplemental draft EIS is required under 40 CFR 1502.9(c)(1)(i).

7. The decision to find lands suitable for sale is wrong because the rationale for the decision in the RMP is wholly inadequate. The rationale reads in its entirety:

Adjustment in the pattern of public land and minerals (sic) ownership within the resource area would: (1) allow for more efficient and economic management, (2) facilitate acquisition of lands with higher public values and uses and (3) facilitate implementation of other recommendations within this and other planning documents.

Neither here, nor anywhere else in the RMP/EIS, is it explained why the disposal of any of the lands found suitable for sale would allow management that is either more efficient or more economic. Rationale #2 applies only to exchanges (although the criticism of rationale #1 applies equally here). Rationale #3 is hopelessly vague. The rationale does not state what other recommendations within this or other planning documents are referred to, or how the disposal of any particular parcel would facilitate the unmentioned recommendations, or what other planning documents are referred to.

C. Response to Public Comment

The State Director's decision to approve the proposed plan for coal

leasing, coal exchange, and the proposed plan for land tenure adjustment is wrong because the Final RMP/EIS fails to respond adequately to public comment. A full listing of inadequate responses would be unnecessarily lengthy for inclusion here.

Briefly, it can be stated that fully half or more of the responses to NPRC's comments and the comments of members of the Bull Mountain Landowners Association on the sections of the RMP/EIS being protested herein failed to answer the question fully or at all, or respond to the criticism raised. Many responses referred to other responses or sections of the text that either had nothing to do with the comment, or very little to do with the comment. Specific comments were answered with extremely vague responses, especially in regard to the procedures and legal requirements for land tenure adjustment decisions. Other responses were simply incorrect factually. A full listing of the responses NPRC and BMLA consider to be unsatisfactory will be provided to the Director should he find it necessary to respond to this protest.

Many if not most of the responses fail to meet the requirements of 40 CFR 1503.4(a).

APPENDIX I

LAND MANAGEMENT ISSUES

ISSUE 1: PROBLEMS OCCUR IN THE MANAGEMENT OF THE "CHECKERBOARD" AREA, AND DEMANDS ARE PLACED ON PUBLIC LANDS FOR COMMUNITY EXPANSION NEEDS AND AGRICULTURAL DEVELOPMENT.

Problems including access, accommodation of public works projects, and unauthorized uses of public lands occur in certain areas as a result of the intermingled pattern of public and private land ownership. Public lands are in demand for agricultural development, urban and residential expansion, and other intensive uses. Public lands can be disposed of for these or other purposes if disposal serves the national interest. A variety of land tenure adjustment procedures are available which could help meet these needs and resolve land management problems.

Planning Criteria

1. Public lands will be placed in one of the following categories:

Category I — lands and mineral resources which will be retained in Federal ownership and will not be considered for sale.

Category II — lands which will be considered for sale or transfer. The mineral estate of Category II land may be sold upon application as allowed in section 209 of FLPMA. The mineral estate can be conveyed upon application if 1) there are no known mineral values or 2) that reservation of the mineral rights in the United States is interfering or precluding nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

Category III — lands and mineral resources which will require further study in order to determine whether they should be placed in Category I or II.

2. Propose sale of a parcel of land if:

- a. It is difficult or uneconomical to manage and is not suitable for management by another Federal agency.
- b. It was acquired for a specific purpose which is no longer served by retention.

- c. Disposal would serve important public objectives and would outweigh the public objectives and values which would be served by retention.

3. Consider allowing agricultural entry where:

- a. There is unappropriated ground water available and the development of new irrigation wells meets the criteria established by the state water engineer.
- b. The land is suitable for agricultural use as established through appropriate laws and regulations.

4. Consider for withdrawal land which another Federal agency has shown to be necessary to its programs.

5. Where a critical resource need for a tract of land is identified, consider purchase only if other forms of acquisition (such as exchange and easements) are not feasible.

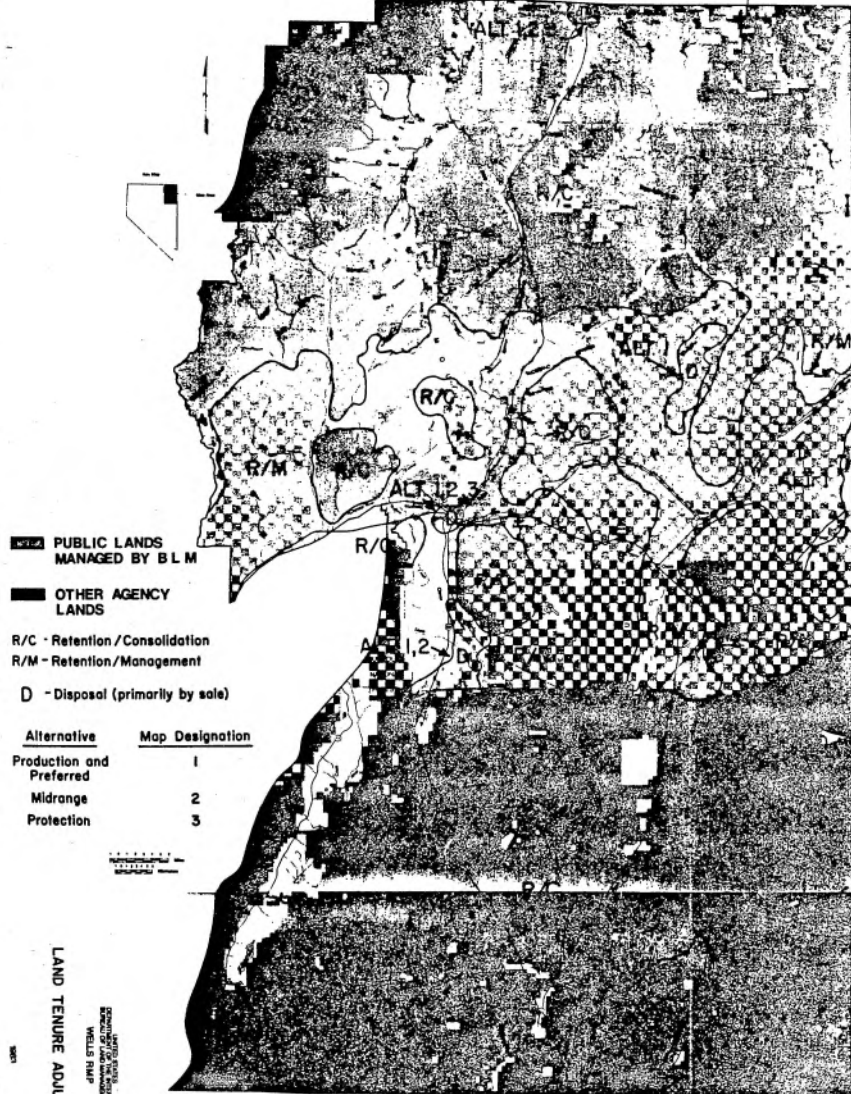
OBJECTIVE/MANAGEMENT ACTIONS

Each resource issue listed below contains an objective statement to be met under this plan, followed by the management actions proposed to attain that objective.

ISSUE 1: LANDS

Objective: To allow disposals, land tenure adjustments, and land use authorizations based on long range goals. These goals are to identify lands to be disposed of or retained and administered for multiple use. These identifications are based on land manageability and quality of resource values and are shown on Map 2-7 of this FEIS.

Short and Long-Term Management Action: Dispose of 90,000 acres, including community expansion lands, primarily through public sale.



APPENDIX J

Natural Resources Defense Council, Inc.

25 KEARNY STREET
SAN FRANCISCO, CALIFORNIA 94108
415 421-6561

Washington Office
1725 I STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20006
202 223-8210

New York Office
122 EAST 42ND STREET
NEW YORK, N.Y. 10168
212 949-0049

February 6, 1984

EXPRESS MAIL

Robert F. Burford, Director
Bureau of Land Management
Department of Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Re: Protest of Wells Resource Management Plan

Dear Mr. Burford:

This letter is a formal protest of certain provisions of the Wells, Nevada Resource Management Plan (RMP) on behalf of the Natural Resources Defense Council, Inc. (NRDC), and the Toiyabe Chapter of the Sierra Club.*

NRDC and the Sierra Club have a longstanding interest in improving the Bureau's management of the publicly-owned rangelands. Both groups participated extensively in the Wells planning process, through the submission of written and oral comments at the scoping and draft environmental impact statement (EIS) stages.** In these comments we urged the Bureau to implement specific management actions that will prevent overgrazing and deterioration of riparian and wildlife habitat, and to take remedial measures to improve the existing unsatisfactory conditions of these areas. We also criticized the Bureau's proposal to sell approximately 90,000 acres of public lands. Because the proposed Wells RMP fails to respond adequately to these concerns or to comply with legal requirements, we must protest its provisions.

*NRDC's address and telephone number are on the letterhead. The mailing address of the Sierra Club, Toiyabe Chapter, is 1685 Kings Row, Reno, NV 89503, (702) 747-4237.

**Copies of these comments are enclosed, with the exception of Sierra Club written comments dated June 2, 1980, and the transcript of oral testimony of Rose Strickland at a hearing on June 20, 1983.

New England Office: 17 ERIE DRIVE • NATICK, MA. 01760 • 617 655-2656
Public Lands Institute: 1720 RACE STREET • DENVER, CO. 80206 • 303 377-9740

As detailed below, we protest the treatment of the following issues in the Wells RMP:

1) Livestock Grazing Use, including grazing levels and management practices, herbicide spraying, and inadequate environmental analysis;

2) Terrestrial Wildlife Habitat;

3) Riparian/Stream Habitat;

4) Land Disposal; and

5) Response to Public Comments.

I. Livestock Grazing Use

A. Grazing Levels and Management Practices. We protest the livestock grazing provisions because they will allow continued overgrazing and resource deterioration and will not remedy unsatisfactory range conditions. According to the Bureau's own estimates, approximately 74% of the area is in poor or fair condition, and "improved range management practices" are necessary to remedy these problems. Draft EIS, p. 3-25. Rather than resolve these problems, however, the Bureau has decided that "[l]ivestock grazing use will continue to be licensed at present levels." Id., p. 2-32. Nor does the RMP propose any specific activity plans or grazing systems that might improve conditions in particular areas.

Even worse, the final EIS demonstrates clearly that in many areas proposed levels of grazing exceed estimated carrying capacity, thereby causing additional range deterioration. See Final EIS, Table A-3. For example, the Bureau will allow grazing in the Goose Creek and Pilot/Crittenden RCAs to exceed grazing capacity by over 30%. In particular allotments, such as the West Cherry Creek and Odgers allotments in the Cherry Creek RCA, the Bureau is proposing to increase grazing to approximately three times higher than estimated production. No adequate explanation is offered to justify these harmful practices.

The Bureau's failure to prevent overgrazing and to remedy unsatisfactory range conditions is a blatant violation of its legal obligations. The Bureau's regulations and policies clearly dictate that allowable grazing use shall not exceed grazing capacity. See 43 C.F.R. § 4120.2-1(a) (1982); "Final Grazing Management Policy," p. 1-6 (I.M. No. 82-292, March 5, 1982). Further, the Bureau is required by the Federal Land Policy and Management Act (FLPMA) and the Public Rangelands Improvement Act

(PRIA) to "take any action necessary to prevent unnecessary or undue degradation of the lands," 43 U.S.C. § 1732(b), and to "improve the conditions of the public rangelands so that they become as productive as feasible," id. §§ 1901(b)(2), 1903(b). Given the serious resource problems that have been caused in the Wells area as a result of existing grazing practices, the Bureau's failure to modify those practices and to reduce grazing levels conflicts with its legal duties.

The proposed action also lacks the specific proposals and objectives that are necessary to provide meaningful guidance to future management activities. Aside from the identification of range "improvements" such as fencing, the proposed action contains only vague provisions that will not direct or control future uses. For example, the Bureau proposes to "develop" grazing systems "to allow for natural recovery of range condition while considering multiple use values," and to "monitor and adjust grazing management systems and livestock numbers as required." Final EIS, p. 2-2 (emphasis added). This general language provides no indication of what specific measures will be taken, or even of what type of measures would be consistent with the plan. The plan provisions are so vague that the Bureau's discretion to act is virtually unconstrained, making a farce out of the planning process. The purpose of a land use plan is to propose specific measures that will resolve resource conflicts, not to delay such decisions indefinitely. Because the plan fails to provide adequate direction for future decisions, it violates the planning requirements of FLPMA, PRIA and the Bureau's regulations. See 43 U.S.C. §§ 1701(a)(2), 1712, 1732(a), 1903(b); 43 C.F.R. §§ 1601.0-5(k) (1983), 4100.0-5 (1982).

The Bureau's failure to propose specific changes in existing grazing practices and to establish specific guidance for future management cannot be justified by the Bureau's alleged need for three to five years of monitoring data. See Final EIS, p. 4-12 (Response No. 33). In our view, the Bureau's recent emphasis on the need for monitoring data that are not available is a transparent attempt to delay necessary reductions in grazing use. The Bureau is required by law to use the best "available" information in preparing land use plans and decisions. 43 U.S.C. § 1712(c)(4). In the Wells area, the Bureau has at least three years of monitoring data (Final EIS, p. 2-5), a recent "one point in time weight estimate survey" (Final EIS, Table A-3), various other "range surveys" (Draft EIS, p. 3-7), and other "range condition and trend data" (Draft EIS, p. R-2). The Bureau is required to utilize this information, together with its professional judgment, to make decisions that comply with legal

Robert F. Burford
February 6, 1984
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requirements. If the Bureau lacks adequate data to justify lower levels of grazing use, certainly it cannot justify its proposal to maintain or increase existing livestock levels. The Bureau has no authority to allow continued overgrazing and resource destruction simply because ideal data are not yet available.

B. Herbicide spraying. We protest the plan's proposal to spray 1500 acres of public lands with herbicides. Final EIS, p. 2-2. The Bureau has totally failed to comply with the requirements of the National Environmental Policy Act (NEPA) with respect to this proposal. Herbicide spraying may have a significant adverse effect on humans and the environment and must be thoroughly analyzed in an EIS. The potential risks must be assessed and a worst case analysis prepared and circulated for public comment when risks are uncertain. See, e.g., Southern Oregon Citizens Against Toxic Sprays, Inc. v. Clark, No. 83-3562, (9th Cir. Dec. 2, 1983). Because the RMP is designed to provide comprehensive guidance for all future management actions, including herbicide spraying, if any, this analysis must be included in the RMP/EIS, not in some later document. See, e.g., 40 C.F.R. § 1502.22 (1982). The Final EIS lacks any analysis of the potential adverse effects of herbicide spraying, including a worst case analysis. Moreover, the EIS failed to consider adequately the possibility of "no action," or foregoing all spraying. As the result of the failure to conduct the necessary analyses, the Bureau lacks any basis for its decision to engage in herbicide spraying.

C. Inadequate Environmental Analysis. As discussed in detail in our written comments, the environmental analysis in the draft EIS fails to comply with important requirements of NEPA. The EIS lacks specific proposals, reasonable alternatives (including no grazing), and detailed analysis of environmental consequences. Because the final EIS does little more than incorporate the draft, it too violates NEPA. Therefore, the EIS should be revised and circulated for additional comment prior to implementing the decisions based thereon.

II. Terrestrial Wildlife Habitat

We protest the terrestrial wildlife habitat provisions because they fail to take all necessary measures to protect and improve important wildlife habitat. The Bureau's Wildlife Habitat Inventory reveals clearly that mule deer winter ranges, antelope yearlong habitat, and elk habitat are all in fair to poor condition. Draft EIS, pp. 3-9 to 3-10, Tables A3-1 to A3-3. The Bureau concedes that one of the "primary reasons" for

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Page Five

this destruction of habitat is "livestock competition." Id. The Bureau has also acknowledged that high stocking rates "could have much more of an [adverse] impact on big game habitat than season or frequency of use." Final EIS, p. 4-11 (Response No. 31). Despite these admitted problems, the Bureau has made no reductions or modifications in existing livestock grazing in order to protect wildlife habitat. As stated by the Nevada Department of Wildlife, "Livestock adjustments should be implemented ... to improve or maintain essential or crucial wildlife habitats." Final EIS, p. 4-65. The Bureau's failure to take such actions violates FLPMA's mandate that the Bureau take all necessary measures to avoid resource destruction, including destruction of wildlife habitat.

We also protest the Bureau's failure to take other steps that would benefit wildlife. The Bureau has not allocated forage to wildlife, see Final EIS, pp. 4-35 (Comments of Wildlife Management Institute), A-9, even though this measure is specifically required by the grazing regulations, 43 C.F.R. § 4110.2-2(a) (1982), and is necessary to avoid excessive allocation of forage to livestock. The Bureau has also apparently failed to establish a goal of "reasonable numbers" of wildlife, as described in the EIS. See Final EIS, p. A-9. Such measures should be adopted to eliminate the plan's undue preference for livestock grazing.

Finally, we favor the plan's well-supported objectives for wildlife such as "protect, enhance, and/or develop 250 spring sources for their wildlife values," "manage 2,600 acres of nonaquatic riparian aspen and 1,000 acres of mountain mahogany to improve deer and elk habitat," and "identify ... 50,000 acres of crucial deer winter habitat for improvement." Final EIS, p. 2-3. However, these provisions are not specific enough to provide adequate guidance for future management. At a minimum, the plan should describe what actions or types of actions are necessary to achieve these objectives, and should seek to describe the affected areas. Otherwise, there is no assurance that the objectives of improving wildlife habitat will ever be attained. While we protest the Bureau's failure to take enough specific actions to protect wildlife and wildlife habitat, we support the important actions that are being taken by the agency on behalf of wildlife, such as modifying existing fences that do not meet Bureau specifications. See id.

III. Riparian/Stream Habitat

We protest the riparian habitat provisions because they fail to prevent further deterioration or to improve unsatisfactory conditions in many areas, and because the favorable objectives proposed for certain areas are not specific enough to direct future management and to ensure that the objectives will be reached.

We commend the Bureau for acquiring detailed information on riparian and stream conditions. See Draft EIS, Tables 3-4 and 3-5, Maps 3-7 and 3-8. This information reveals that most of this habitat is in "poor" condition. Id. The Bureau also recognizes that "a 30 percent improvement in current conditions should be a reasonable objective for any stream within the Wells RA." Final EIS, p. 4-14 (Response No. 37). In spite of this information, the Bureau is proposing to "improve" only 2518 acres/95.5 miles of riparian/stream habitat, Final EIS, p. 2-3, even though 10,159 acres/398 miles of habitat are now in "fair" or "poor" condition. See Draft EIS, Tables 3-4 and 3-5. In effect, the Bureau is allowing approximately 75% of the degraded riparian areas to continue in unsatisfactory condition or to decline further. Moreover, the EIS recognizes that, under the proposed action, riparian areas will remain in poor condition and will continue to deteriorate. See Draft EIS, p. 4-56.

The Bureau's failure to seek to improve most of the degraded riparian areas violate its obligations under FLPMA and PRIA. The EIS recognizes that riparian areas are "the most productive areas on western rangelands" and that they play a critical role for wildlife and recreational values. Draft EIS, p. 3-11. Under the circumstances, the Bureau is clearly not taking all actions needed "to prevent unnecessary or undue degradation" and to "improve the conditions of the public rangelands," as required by law. See 43 U.S.C. §§ 1732(b), 1901(b) (2), 1903(b).

The Bureau's failure to propose adjustments in livestock use is also unacceptable, given the damage that livestock have caused to riparian areas. The EIS states that, for riparian areas, "livestock grazing is the primary cause of ... deterioration." Final EIS, p. 4-16 (Response No. 45). The BLM's "stream inventory report" in the Wells RA confirmed that "in most cases, livestock grazing was primarily responsible for producing and maintaining deteriorated aquatic/riparian habitat conditions." Draft EIS, p. 3-14. Given these findings, the Bureau's failure to modify existing livestock practices will only

lead to further deterioration.

Finally, even where the plan proposes favorable objectives for certain riparian areas, it lacks the details necessary to ensure that these objectives will be attained. For example, while the plan proposes to "improve" conditions in certain areas "using techniques" that would do so, the plan fails to identify any particular action or type of action that would achieve this objective. As discussed above, the Bureau's failure to include specific actions in the plan that will direct and control future management violates the planning requirements of FLPMA, PRIA, and its own regulations.

IV. Land Disposal

We protest the Bureau's proposal to sell approximately 90,000 acres of public land. The need for such a large scale sale has not been demonstrated. Moreover, the EIS lacks a detailed description of how particular parcels will be chosen, or of the adverse effects of such sales to wildlife, recreation, and other uses. Further, the plan lacks specific criteria to guide future land sales. In short, the plan fails to analyze the issue of land sales adequately or to provide meaningful guidance for actual decisions.

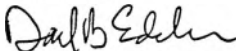
V. Response to Public Comments

We protest the Bureau's failure to provide thorough responses to many of the comments on the draft EIS offered by NRDC, the Sierra Club, and others. For example, the Bureau did not even identify, much less respond to, a number of significant comments made by NRDC, relating to the absence of specific proposals in the EIS, the Bureau's duty to avoid range deterioration, and the inadequacy of the EIS's impact analysis. See Final EIS, pp. 4-69 to 4-70. Similarly, many of the comments made by the Sierra Club, including specific inquiries and remarks relating to similar issues, were simply ignored. A cursory overview of Chapter 4 of the Final EIS reveals clearly that public comments were not taken seriously; in fact, very few substantive changes were made in the document, even though the agency received over 70 relevant comments. In short, the Bureau has failed to comply with NEPA's requirement that the agency give "full and fair consideration" to comments, Sierra Club v. Adams, 578 F.2d 389, 394 (D.C. Cir. 1978), and provide "good faith, reasoned analysis in response." Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973).

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February 6, 1984
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In conclusion, we urge the Bureau to issue revised decisions that will prevent resource deterioration, improve unsatisfactory conditions, and comply fully with the Bureau's legal obligations.

Sincerely,



David B. Edelson
NRDC Staff Attorney

cc: Edward F. Spang, State Director (w/o enclosures)

Enclosures:

Sierra Club, comments on Wells RMP alternatives, October 16, 1982
Sierra Club, comments at Wells RMP/EIS hearing, June 20, 1983
NRDC, comments on draft Wells RMP, August 16, 1983
Sierra Club (Public Lands Comm.), comments on draft Wells RMP,
August 17, 1983
Sierra Club (Conservation Comm.), comments on draft Wells RMP,
August 17, 1983

APPENDIX K



United States Department of the Interior 2200 (321)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

November 1, 1983

Instruction Memorandum No. 84-81
Expires: 9/30/84

RECEIVED

To: AFO's

NOV 18 '83

From: Director

BLM Montrose Dist.

Subject: Land Exchange Policy

Enclosed for your use are two policy statements for fee exchanges that were approved by the Assistant Secretary on October 14, 1983. The first statement is concerned with general fee exchange policy. The second statement is limited to fee exchange of leasable and salable minerals.

The two policy statements will eventually become a part of the BLM Manual Section 2200.

Deputy Director, Lands and Renewable Resou

2 Enclosures

- Encl. 1 - Fee Exchange Policy (General) dated 9/26/83 (2 pp)
- Encl. 2 - Fee Exchange Policy for Leasable and Salable Minerals dated 9/26/83 (1 p)

NOV 14 1983

BUREAU OF LAND MANAGEMENT
FEE EXCHANGE POLICY (GENERAL)

This statement sets forth general BLM policy for the exchange of public lands or interests therein. It reflects the provisions of Sections 102, 205, and 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2744 and 2755-56; 43 U.S.C. 1701 and 1715-16), hereafter FLPMA. This policy statement represents a commitment by BLM to implement the land exchange policies of the FLPMA, consistent with BLM's other statutory obligations.

The BLM recognizes that numerous opportunities exist for public interest land exchanges with the non-Federal sector. BLM has a responsibility to work closely with other Federal resource management agencies, State and local governments, and the private sector to complete these mutually beneficial transactions. Benefits to be derived for the Federal and non-Federal sectors include elimination of inholdings, better management areas, and greater economic returns for all concerned.

The following principles shall guide BLM in its land exchange program:

1. Disposal of public lands by exchange shall be considered as serving the national interest within the policy context of Section 102(a)(1) of FLPMA.
2. The BLM shall strive to process mutually benefiting, public interest, land exchanges in a timely and efficient manner through continually maintaining and streamlining its land use planning, appraisal, and exchange processes.
3. Exchanges to acquire inholdings in Federal conservation areas are in the public interest and will aid in the reduction of the national debt through reducing expenditures of appropriated funds in the acquisition of lands or interests in lands needed for Federal conservation purposes.
4. Acquisition, through exchange rather than purchase, of lands or interests in lands required for Federal resource management or protection programs will retard the present expansion of Federal real estate holdings and help to assure the integrity of State and local tax bases.
5. Comments from affected States, local government, and the general public shall be sought and considered before completion of each exchange.
6. Exchanges may be utilized, when economically advantageous, to consolidate attractive parcels for sale.
7. Patent and deed reservations and conditions shall be kept to the absolute minimum necessary to complete the transaction. Rights of third parties holdings rights-of-way and other legal interests in the exchanged lands shall be protected.
8. The generally preferred rule is for both surface and subsurface (mineral) estates to be traded in an exchange. However, due to third party encumbrances, or difficulties in the valuation process, it may be preferable to complete certain exchanges with reservations. Such exceptions to the generally preferred rule are to be made on a case-by-case basis.
9. Exchanges shall be utilized to consolidate or unite the surface and subsurface estates for both the Federal Government and non-Federal owners in split or mixed estate situations.
10. Exchanges may be utilized to effect ownership and management area boundary changes or adjustments and to form more logical and efficient land and resource management areas for both the Federal Government and non-Federal owners.

11. In application of the determinations of public interest required under Section 206(a) of FLPMA, the BLM shall give the broadest possible consideration of public needs when evaluating exchange proposals.

12. Whenever the law permits, expenses incurred by BLM on exchange actions for the benefit of other Federal agencies shall be recovered from such benefiting agency. The BLM shall not attempt to recover nominal costs.

13. Mining claims of record shall only be contested for the purpose of determining the validity of such claims in those instances in which an exchange has been determined to be in the public interest. Expenditures of limited Federal appropriations will not be made simply to clear the land of mining claims of one party to make the land available for another party.

14. When an exchange involves the cancellation of a grazing permit or lease, the compensation for range improvements and two-year notification requirements of Section 402(g) of the FLPMA and 43 CFR 4110 shall be met.

15. The Bureau shall maintain effective professional, technical, and managerial personnel in the disciplines necessary to complete exchanges of all types.

These principles shall be implemented and further clarified where necessary through specific guidance to the field.



Director, Bureau of Land Management

9/26/83

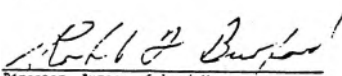
Date

Bureau of Land Management
Fee Exchange Policy for Leasable
and Salable Minerals

The exchange of leasable and salable minerals is an important tool in achieving public interest Federal multiple use management and land protection goals. When considering an exchange, the manager must also consider the relative utility of competitive and cooperative leasing of leasable minerals, and sale of salable minerals, in their pre-exchange configuration. Although all of the following policy elements will seldom, if ever, be found in any one exchange proposal, one or more should be found in every proposal. Any proposal that would have an opposite effect to a policy element contained herein would not be considered to be in the public interest and must be denied at the earliest possible stage.

An exchange of minerals is in the public interest if:

1. The exchange would consolidate Federal holdings into a logical mining unit(s).
2. The exchange would consolidate non-Federal holdings into a logical mining unit(s).
3. The exchange would serve a national resource management or protection need.
4. The exchange would simplify jurisdiction and allow Federal land use planning efforts to be confined to an area in which the United States controls the mineral development.
5. The exchange would reunite Federal surface and subsurface estates.
6. The exchange would eliminate isolated tracts and checkerboard patterns of Federal minerals.
7. The exchange would achieve a management goal without using appropriated funds to pay for the resources needed by the United States.
8. The exchange would meet needs of State and local people.
9. The non-Federal lands to be received in the exchange would serve the public better in public ownership than the minerals to be transferred in the exchange.
10. The exchange would enhance competitive bidding for the Federal minerals.
11. The potential revenue from a lease or sale of the Federal minerals consolidated by the exchange would be greater than the potential revenue from a lease or sale of the minerals in Federal ownership prior to the exchange.
12. The exchange does not involve a transfer of a fee interest in Federal minerals for a less than fee interest (e.g., conservation or scenic easements) in non-Federal lands. If a less than fee interest in non-Federal lands is all that is needed, a fee exchange shall be followed by a competitive bidding, or a modified competitive bidding, sale of the unneeded interests as the situation dictates.


Director, Bureau of Land Management

Date

9/26/83

APPENDIX L

BY SENATORS Yost, Anderson, Clark, and D. Sandoval;
also REPRESENTATIVES Winkler, Younglund, Boley, Shoemaker and Spano.

A BILL FOR AN ACT

- 1 CONCERNING PUBLIC LANDS, AND PROVIDING FOR STATE CONTROL AND
2 ADMINISTRATION OF CERTAIN LANDS WITHIN THE BOUNDARIES OF
3 COLORADO.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for state control of certain lands, as defined, within state boundaries. Provides that, upon transfer of public lands to the state, such lands shall be administered in accordance with principles of multiple use and sustained yield and with consideration and provisions for public access, conservation, and transfers to units of local government, and for reimbursement for receivables currently due counties from the federal government, if such payments are reduced because of state action. Directs that no disposition of public lands may occur unless authorized by the general assembly.

-
- 4 Be it enacted by the General Assembly of the State of Colorado:

- 5 SECTION 1. Title 36, Colorado Revised Statutes 1973, as
6 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

- 7 ARTICLE 25

- 8 State Claim to Public Lands

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 36-25-101. Legislative declaration. (1) The general
2 assembly determines, finds, and declares that:

3 (a) On August 1, 1876, Colorado was admitted to statehood
4 on the condition that it forever disclaim all right and title to
5 unappropriated public land within its boundaries;

6 (b) The state of Colorado has strong moral, historical,
7 economic, and legal claims upon the public land retained by the
8 federal government within its borders;

9 (c) The fact that Colorado and other states, especially
10 western states and others admitted to statehood in recent times,
11 were forced to renounce any claim to the unappropriated lands
12 within their boundaries violates the "equal footing" doctrine,
13 because Colorado and the other states were denied admission to
14 the union on an equal footing with the original states;

15 (d) The doctrine of admission to statehood on an equal
16 footing with the other states is based on the very character and
17 purpose of the union of the states as established by the
18 constitution of the United States and is supported by very early
19 case law precedent and other governmental actions; and

20 (e) The exercise of dominion and control of the public
21 lands within the state of Colorado by the United States works a
22 severe, continuous, and debilitating hardship upon the people of
23 the state of Colorado.

24 (2) The general assembly also determines, finds, and
25 declares that the exercise by this state of control over the
26 public lands within its boundaries would greatly benefit the

1 public because the tax burden on state residents would be
2 lessened; state administration of the public lands would result
3 in a more coordinated, efficient, and fair management of public
4 lands; the availability of additional land is absolutely
5 essential to accommodate the rapidly growing population of this
6 state and would enhance the lifestyle of all state residents; and
7 the states of this union and their citizens are better equipped
8 than the federal government to make the often difficult policy
9 decisions that are necessary with respect to the appropriate uses
10 of such lands within the states.

11 36-25-102. Definitions. As used in this article, unless
12 the context otherwise requires:

13 (1) "Board" means the state board of land commissioners.

14 (2) "Commission" means the public land commission created
15 by section 36-25-107.

16 (3) "Department" means the department of natural resources.

17 (4) "Executive director" means the executive director of
18 the department of natural resources.

19 (5) "Public land" means all land located within the
20 exterior boundaries of this state and all minerals on or below
21 the surface of such land, except:

22 (a) Land to which title is held by any private person or
23 entity;

24 (b) Land which is owned or held in trust by this state, any
25 of its political subdivisions, units of local government, or
26 institutions within the state system of higher education before

1 the effective date of this article;

2 (c) Land which is controlled by the United States
3 department of defense, department of energy, or bureau of
4 reclamation and which was acquired by consent of the general
5 assembly and which meets the standards and purposes for which
6 control was authorized;

7 (d) Land reserved or held in trust as Indian reservations
8 or for Indian purposes; or

9 (e) Land located within and which meets the standards and
10 purposes of a congressionally authorized national park, national
11 monument, wildlife refuge, wilderness area, or historical site or
12 artifact or which is or was acquired by the United States
13 congress with the consent of the general assembly.

14 36-25-103. Property of the state. Subject to existing
15 rights of applicants for land, on and after the effective date of
16 this article, all public lands in this state not previously
17 appropriated to private ownership are the property of this state
18 and subject to its jurisdiction and control.

19 36-25-104. Existing rights under federal law. Until
20 equivalent measures are enacted by the general assembly, the
21 rights and privileges of the people of this state granted under
22 the provisions of existing federal law are preserved under
23 administration by the board.

24 36-25-105. Treaties and compacts. Public lands which have
25 been administered by the United States under international
26 treaties or interstate compacts shall continue to be administered

1 by the state in conformity with those treaties or compacts. Any
2 land or land use claimed and filed with a court of competent
3 jurisdiction prior to the effective date of this article by a
4 person under an international treaty shall continue to be the
5 subject of judicial proceedings pursuant to existing, relevant,
6 or controlling state or federal laws, and this article shall not
7 affect or impair any such rights or claims.

8 36-25-106. Administration - principles of multiple use and
9 sustained yield. (1) (a) Upon transfer of the public lands to
10 this state pursuant to this article, the board shall hold all
11 public land in trust for the benefit of the people of the state
12 and is vested with authority, subject to the provisions of this
13 article, to administer and manage such land in an orderly and
14 beneficial manner consistent with the public policy declared in
15 this article. The board shall administer the public lands of
16 this state acquired pursuant to this article in such a manner as
17 to conserve and preserve natural resources, wildlife habitat,
18 wilderness areas, and historical sites and artifacts and to
19 permit the development of compatible public uses for recreation,
20 agriculture, ranching, mining, and timber production and the
21 development, production, and transmission of energy and other
22 public utility services under principles of multiple use and
23 sustained yield which provide the greatest benefit to the people
24 of this state.

25 (b) (I) "Multiple use" means the management of the land in
26 a combination of balanced and diverse resource uses that takes

1 into account the long-term needs for renewable and nonrenewable
2 resources, including but not limited to recreation, range,
3 timber, minerals, watershed, wildlife, and fish; natural, scenic,
4 scientific, and historical values; and the coordinated management
5 of the resources without permanent impairment of the productivity
6 of the land or the quality of the environment, with consideration
7 being given to the relative values of the resources and not
8 necessarily to the combination of uses that will give the
9 greatest economic return or the greatest unit output in any given
10 year.

11 (II) "Sustained 'yeild" means the maintenance of a
12 high-level annual or regular periodic output of the various
13 renewable resources of the public lands consistent with multiple
14 use.

15 36-25-107. Public land commission. (1) A state commission
16 to be known as the public land commission is hereby created
17 within the department in order to provide for the orderly
18 transition and administration of public lands acquired pursuant
19 to this article.

20 (2) The commission shall consist of five members: The
21 executive director; the commissioner of agriculture; the register
22 of the board; and two members who are elected and serving
23 officials of local governments, appointed by the governor and
24 confirmed by the senate. Appointments to the commission shall be
25 made within sixty days after the effective date of this article.
26 A vacancy in the appointed membership shall be filled in the same

1 manner and for the remainder of such term. Each member may vote
2 on matters before the commission.

3 (3) Members shall receive no compensation for their
4 services but shall be reimbursed for their actual and necessary
5 expenses incurred in the performance of their duties under this
6 article from funds appropriated to the department.

7 (4) The executive director shall serve as chairman and he
8 shall preside over the commission.

9 (5) The department shall furnish all staff necessary to
10 assist the commission in its work.

11 (6) The work and existence of the commission shall
12 terminate on July 1, 1983.

13 (7) No public land proposed to be retained by the state for
14 wildlife, parks, recreation, or other public uses shall be
15 transferred to the administering state agency without the prior
16 approval of the general assembly.

17 36-25-108. Management plan. (1) The commission shall
18 develop a plan for the transfer and management of lands and
19 minerals subject to this article. This plan shall be submitted
20 to the governor and general assembly prior to January 1, 1983,
21 and will be subject to their approval. Such a management plan
22 shall consider:

23 (a) Management of the public lands pursuant to section
24 36-25-106;

25 (b) Policies and programs regarding the disposal, lease, or
26 exchange of any lands or resources acquired pursuant to this

1 article;

2 (c) Policies and programs regarding public access for the
3 use of such lands;

4 (d) Conservation of lands for wildlife habitat or
5 recreational purposes;

6 (e) Programs regarding the use or transfer of lands to
7 municipalities and other governmental entities for public
8 purposes; and

9 (f) Methods and formulas of providing state funding to the
10 counties of this state for any receivables due such counties or
11 any other political subdivisions from the federal government or
12 any federal agency under 31 United States Code, section 1601, et
13 seq., whose payments may be reduced due to action taken by this
14 state under this article.

15 36-25-109. Disposition of public lands - proceeds - leases.

16 (1) The board may sell, lease, exchange, or encumber the public
17 lands acquired pursuant to this article when specifically
18 authorized to do so upon approval of the general assembly and
19 under the terms and conditions set forth in this article.

20 (2) No public lands acquired pursuant to this article shall
21 be disposed of before July 1, 1983, except for any sales or
22 exchanges which were pending on the effective date of this
23 article or rights-of-way for public purposes.

24 (3) Proceeds of sales, fees, rents, royalties, or other
25 moneys paid or due the state under this article shall be
26 deposited with the state treasurer to be credited to the general

fund.

(4) Where leases of the public lands acquired pursuant to this article are sought, annual fees not to exceed fair market value shall be charged, with provision in each lease for tenure by the lessee.

36-25-110. Disposition - written authorization required.

(1) Except as authorized by this article or by the board pursuant to law, any sale, lease, exchange, encumbrance, or other disposal of any parcel of, or interest in, the public lands is void.

(2) Any person who intends to perform or carry out any act with respect to the use, management, or disposal of any public lands under color of any statute, ordinance, regulation, custom, or usage of the United States or otherwise shall obtain written authorization from the board confirming or approving the act. The board shall give the written authorization only as permitted under this article.

(3) Any person who does not obtain written authorization as required under subsection (2) of this section may be enjoined in an action brought by the attorney general or as provided in section 36-25-111 (3) from performing or continuing to carry out any act respecting the use, management, or disposal of any public lands.

(4) Any person who receives any money or other consideration for any purported sale or other disposition of any public lands which was made in violation of this article is

1 liable in damages to this state for that money or the value of
2 any other consideration. The money or value of any other
3 consideration may be recovered for this state in an action
4 brought by the attorney general or as provided in section
5 36-25-111 (3).

6 36-25-111. Exclusive jurisdiction - action. (1) The state
7 of Colorado has exclusive jurisdiction to enforce the provisions
8 of this article.

9 (2) Any person claiming damage under this section or
10 section 36-25-110, either individually or as a representative of
11 a class of complainants, may file with the board a verified
12 complaint. The complaint shall set forth the alleged violation
13 and contain other information as required by the board. A
14 complaint may also be filed by a board member or the attorney
15 general with the board.

16 (3) Whenever it appears that the interest of the state, as
17 determined by the board, or a substantial number of persons may
18 be injured or otherwise adversely affected by actions complained
19 of, the board may request the attorney general to represent that
20 class in a civil action or other proper proceeding for redress,
21 and it shall be the duty of the attorney general or of competent
22 counsel appointed by the attorney general for such a purpose to
23 bring such an action or proceeding pursuant to the direction of
24 the board.

25 SECTION 2. Safety clause. The general assembly hereby
26 finds, determines, and declares that this act is necessary for

- 1 the immediate preservation of the public peace, health, and
- 2 safety.

APPENDIX M

Federal Register

Vol. 47, No. 40

Monday, March 1, 1982

Presidential Documents

Title 3—

Executive Order 12348 of February 25, 1982

The President

Federal Real Property

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), in order to improve management of Federal real property, it is hereby ordered as follows:

Section 1. (a) There is hereby established a Property Review Board.

(b) The members of the Board shall be the Counsellor to the President; Director, Office of Management and Budget; Chairman, Council of Economic Advisers; Assistant to the President for Policy Development; Chief of Staff and Assistant to the President; Assistant to the President for National Security Affairs; and such other officers or employees of the Executive branch as the President may from time to time designate. One of the members of the Board shall be designated by the President as Chairman.

(c) Staff, including an Executive Director, and other administrative support shall be provided from resources available to the President.

Sec. 2. The Board shall perform such functions as may be directed by the President, including the following:

(a) develop and review Federal real property acquisition, utilization, and disposal policies with respect to their relationship to other Federal policies;

(b) advise the Administrator of General Services with respect to such standards and procedures for executive agencies that are necessary to ensure that real property holdings no longer essential to their activities and responsibilities are promptly identified and released for appropriate disposition;

(c) review and examine prior disposals of surplus property for public benefit discount conveyances to ensure that the property is being used and maintained for the purpose for which it was conveyed;

(d) receive the surveys and reports made by or to the Administrator of General Services pursuant to Sections 3 and 4 of this Order as well as other reports on Federal real property that are requested by the Board, with particular attention to resolution of conflicting claims on, and alternate uses for, any property described in those reports, consistent with laws governing Federal real property;

(e) provide guidance to the Administrator of General Services in accord with Section 6 of this Order;

(f) establish for each Executive agency annually the target amount of its real property holdings to be identified as excess; and

(g) submit such recommendations and reports to the President as may be appropriate.

Sec. 3. (a) All Executive agencies shall periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services pursuant to Section 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 487), and this Order.

(b) The head of each Executive agency, within 60 days of the date of this Order, shall report to the Administrator of General Services and the Board the agency's real property holdings which, in his judgment, are not utilized, are underutilized, or are not being put to optimum use.

(c) The head of each Executive agency shall identify, and report to the Board, all those properties which can be considered for disposition in response to the targets established by the Board in subsection 2(f) of this Order.

Sec. 4. The Administrator of General Services in consultation with the Board shall issue standards and procedures, conduct surveys, and cause surveys to be conducted, to ensure that the real property holdings of Executive agencies shall continually be evaluated with special emphasis on the identification of properties that are not utilized, are underutilized, or are not being put to optimum use. The Administrator shall consult with the Board and appropriate Executive agencies in order to (a) identify real property that is excess or surplus to the needs of the Executive agencies, and (b) make such real property available for its most beneficial use under the various laws of the United States affecting such property.

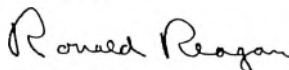
Sec. 5. The Administrator of General Services shall report to the Board with respect to any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property.

Sec. 6. Before the Administrator of General Services assigns or conveys property for public benefit discount conveyances, he shall first consult with the Board and consider such guidance as it may provide.

Sec. 7. The Administrator of General Services shall, to the extent permitted by law, provide necessary advice and assistance to the Board to accomplish the objectives of this Order.

Sec. 8. Executive Order No. 11954, as amended, is revoked.

THE WHITE HOUSE,
February 25, 1982.



APPENDIX O

December 29, 1982

Instruction Memorandum No. 83-203
Expires 9/30/83

To: All Field Officials
From: Director
Subject: Asset Management - Technical Update

Technical update sheets for Public Lands and Real Property are enclosed. You should see that a copy of each is circulated throughout your entire staff. Take particular note of the "Planning Criteria for Asset Management" found on page 4 of Enclosure 1, and the description of the three categories in which public lands will be placed.

James M. Parker
Associate Director

- 2 Enclosures:
Encl. 1 - Asset Management (Technical Update - Public Lands) (5 pp)
Encl. 2 - Asset Management (Technical Update - Real Property) (3 pp)

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ASSET MANAGEMENT
(TECHNICAL UPDATE - PUBLIC LANDS)

Asset management is the new term applied to the various land disposal actions routinely conducted by the Department of the Interior (DOI). These land disposal actions fall into several categories, including public sale, exchanges, transfers to other government entities, and jurisdictional boundary adjustments with other Federal agencies for efficiency and effectiveness. National Wildlife Refuges, National Parks, and Indian Trust Lands will not be sold.

GOAL OF ASSET MANAGEMENT IN THE DEPARTMENT OF THE INTERIOR

The goal of the asset management initiative is to apply common sense management to Federal real property and public land assets. This goal is based in existing law including the Federal Property and Administrative Services Act of 1949, and the Federal Land Policy and Management Act of 1976 (FLPMA). President Reagan's initiative has only focused new emphasis on the sound management of Federal properties with Executive Order 12348 of February 25, 1982. The basic objectives of this initiative as applied within the Department of the Interior are:

- to sell excess Federal property and some public lands for higher and better use;
- to cut the cost of government by eliminating unnecessary management and ownership of lands and real property which are clearly in excess of Federal needs; and
- to use proceeds from these sales to help pay part of the national debt.

This is an asset management initiative, carried out within the framework of existing statutes and regulations, and applying sound business principles and common sense to the disposition and retention of DOI assets. It is not a new program to dispose of all, or even a major portion of Federal property and public lands.

SCOPE OF ASSET MANAGEMENT IN DOI

The Secretary has asked the Assistant Secretary - Land and Water Resources to coordinate asset management within DOI by providing policy direction for DOI-managed public lands and real property. The Assistant Secretary has established a temporary staff - the Asset Management Coordination Office - to serve as the DOI liaison to the Property Review Board and to coordinate development and initial implementation of DOI activities. Since this initiative is being carried out within the framework of existing statutory authority, regulations, and ongoing programs, the basic implementation responsibility still remains within the operating bureaus (Bureau of Land Management (BLM), Bureau of Reclamation (LBR), and the Office of Acquisition and Property Management (PAM)). The Property Review Board established by the President in Executive Order 12348 offers broad policy guidance and coordination among all the agencies of the Federal government. Asset management within the Interior Department is managed and implemented solely by DOI and its bureaus.

DISPOSAL AUTHORITY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

Primary authority to accommodate the Asset Management initiative for public lands administered by the BLM is provided in the Federal Land Policy and Management Act (FLPMA) of 1976. Section 203 provides that a tract of public land may be sold, where, as a result of the land use planning required under Section 202, the Secretary determines that the disposal meets the following criteria:

- due to the location or other characteristics, the tract is difficult and uneconomic to manage as part of the public lands; or
- the tract was acquired for a specific purpose and that tract is no longer required for that or any other Federal purposes; or
- disposal of the tract will serve important public objectives, including but not limited to, expansion of communities and economic development, and which outweigh other public objectives and values, including but not limited to, recreation and scenic values, which would be served by maintaining the tract in Federal ownership.

Section 206 provides the authority for BLM to exchange land with States, and private parties where the Secretary finds that the land exchange serves the public interest. Land exchanges with States or private parties must be conducted within the same State.

Section 207 of FLPMA prohibits conveyance of any land whether by sale or exchange to any person who is not a citizen of the United States or to any corporation not subject to the laws of any State or the United States.

Section 209 provides for the retention by the United States of all minerals except under certain circumstances when the minerals may be conveyed along with the lands.

Section 210 requires at least 60 days notice to State and local officials prior to offering for sale or otherwise conveying the public land within their jurisdiction.

If the Secretary decides to sell any tract of land larger than 2,500 acres, Congress must be notified. Congress then has 90 days to disapprove the sale by concurrent resolution.

Sales conducted under FLPMA provisions will be made at the fair market value of the land. This generally is established by formal appraisal procedures. Sales will be conducted by competitive bidding at public auction or negotiated sale.

OTHER PUBLIC LAND DISPOSAL AUTHORITIES

There are several other authorities for the sale or disposal of public lands. Mineral interests in lands may be sold to the surface owner where Federal retention of the minerals interferes with or precludes a more beneficial use of the surface.

The Santini-Burton Act provides for the sale of certain lands in Las Vegas, Nevada. The receipts from these lands are used to acquire land in the Lake Tahoe area.

Under the Recreation and Public Purposes Act of 1926, land may be granted at no cost, leased, or sold to State or local governments or nonprofit organizations for recreational or other public purposes. Sales are made at a value determined through appraisal or otherwise taking into consideration the proposed use of the land. If the lands are to be conveyed to a State or local government for recreation or historic monument use, no monetary consideration is required.

Potential agriculture land may be either sold under the authority of FLPMA or disposed of under other authorities such as the Desert Land Act, Carey Act, or Indian Allotment Act. The amounts of land which may be conveyed as well as the qualifications of applicants vary under each law.

In addition to disposal by sale, public lands may also be exchanged for other non-Federal lands to improve land ownership patterns and management opportunities.

PUBLIC LAND FACTS

More than 540 million acres of public land are under management of DOI. Approximately 400 million acres (or 74 percent) of this land has been absolutely exempted from inventory or sale under asset management, either as national parks, wildlife refuges, wilderness areas, Indian trust lands, or special category lands (BLM Category I). Roughly 2.7 million acres of public land (or 1/2 of 1 percent) of total DOI surface acreage are identified for disposal in existing land use plans.

It is only through the land use planning process that BLM lands will be identified for exchange, transfer, or sale. Each land use plan must be as consistent as practicable under Federal law with State and local plans where they exist. The BLM planning process is an ongoing activity. Land use plans identify potential disposal areas; however, additional site specific environmental analyses and land examination reports are required before any specific tracts of land are disposed of under asset management.

PUBLIC PARTICIPATION AND CONSISTENCY WITH STATE AND LOCAL PLANS AND ZONING

Public participation and State and local government consultation and coordination are integral parts of asset management for DOI-managed public lands. The land use planning process prescribed by the BLM provides numerous opportunities for extensive participation for the public, State and local governments.

In addition, formal sale procedures require that State and local government officials in the vicinity of lands to be sold, be notified not less than 60 days prior to the sale. This 2-month comment period is intended to allow the appropriate body the opportunity to review existing zoning and other regulations concerning the use of the lands prior to conveyance.

PLANNING CRITERIA FOR ASSET MANAGEMENT

As BLM land use plans are updated, public lands will be placed in one of three categories as follows:

Category I--lands and mineral resources which will be retained in Federal ownership and will not be considered for sale.

Category II--lands and mineral resources which will be considered for sale or transfer.

Category III--lands and mineral resources which will require further study in order to determine whether they should be placed in Category I or II.

Category I: Lands Retained in Federal Ownership and Management

This category contains environmental and/or economic assets of national significance. Federal policy will be to retain these lands under Federal ownership and management. These lands will not be considered for sale.

Public lands currently designated as national environmental assets in Category I include:

- Wilderness areas.
- Wilderness study areas.
- National conservation areas.
- Wild and scenic rivers and wild and scenic study rivers.
- National or historic trails.
- Natural or research natural areas.
- Designated areas for cultural or natural history.
- Designated areas of critical environmental concern.
- Designated wild horse preserves.
- Other congressionally designated areas.

Currently designated mineral resources with national economic significance which will be placed in Category I include:

- Known recoverable coal resource areas.
- Known geologic structures (oil and gas).
- The Outer Continental Shelf.
- Known geothermal resource areas.
- Areas identified to have nationally significant oil shale deposits.
- Designated tar sands areas.
- Known potash, sodium, and phosphate areas.

Further classes and additional acreage of lands, minerals, or other resources with economic or environmental assets of national significance may be included in Category I as further studies of Category III lands are completed.

Category II: Lands and Mineral Resources Designated for Sale or Transfer

Public lands which are likely to be placed in this category include:

- Lands proximate to cities, towns, or development areas.
- Scattered non-urban tracts so located as to make effective and efficient management impractical.
- Lands designated for agricultural, commercial, or industrial development as the highest value or otherwise most appropriate use.
- Lands and minerals that do not qualify for sale under Sections 204³ (a) or 209 (b) of FLPMA but are suitable for disposal through exchange, or other applicable law.
- Other types of lands and minerals identified for sale in an existing land use plan.

Additional lands may be included in Category II as further studies of Category III lands are completed.

Category III: Lands and Mineral Resources Requiring Further Study

Lands and mineral resources in Category III include those lands, minerals, and other resources requiring further study in order to determine whether they should be placed in Category I or Category II.



United States Department of the Interior

2200 (321)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

December 29, 1982

Instruction Memorandum No. 83-204

Expires 9/30/83

To: AFO's
From: Director

Subject: Land Exchanges, Boundary Adjustments, and Asset Management

The Department of the Interior possesses a myriad of statutory authorities governing exchanges of public lands and interests in public lands. Some of this authority is general in nature, e.g., Section 206 of the Federal Land Policy and Management Act of 1976 and the general exchange authority of the National Park Service (NPS) provided by the Act of July 15, 1968. Other exchange authority is restricted to certain types of uses, such as National Trails System exchanges found at Section 7 of the Act of October 2, 1968, and to specific areas, such as the Redwoods National Park Act of October 2, 1968.

In addition to exchanges that benefit programs of the BLM and other Federal agencies, the BLM is currently engaged in a boundary adjustment study program with the Forest Service (FS).

Since exchanges enable us to accomplish many land adjustment goals, they are part of the overall Asset Management initiative. For the purposes of Asset Management planning, three categories have been established for the review of public lands under this initiative. They are:

- Category I - lands suitable for retention in public ownership and needed for multiple use management;
- Category II - lands suitable for disposal;
- Category III - lands needing further study before a decision can be made.

More detail on these categories is contained in the Asset Management Technical Update on public lands recently approved by the Department for internal use. See Instruction Memorandum No. 83-203.

Effective immediately, the following guidelines will be followed when considering public lands in Categories I, II, and III for the exchange or FS boundary adjustment programs.

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1. Category I lands: These public lands are available for and support a full range of multiple uses. BLM's mission is active multiple use and sustained yield management. The lands designated Category I are considered to be in permanent public ownership, with small exceptions where ownership adjustments are in the public interest. Proposals for the exchange of public land and/or mineral resources in Category I areas will only be considered in the following situations:

a. The exchange would benefit management programs of the BLM (or units within congressionally established national systems of the Federal Government, such as units of the FS and NPS) to a greater extent than would be realized through retention of the public lands in Federal ownership. In other words, it must be determined that the public values and objectives that could be served by the non-Federal lands or interests to be acquired through exchange are greater than those public values and objectives that are presently being served by the public lands or interests in the exchange proposal.

b. Instances in which the exchange has been directed by specific legislation.

c. The exchange will aid in blocking State and Federal management units.

The present BLM/FS boundary adjustment study program will be continued in Category I areas.

2. Category II lands: Public lands designated in Category II are in a valid BLM land use plan. Category II lands meeting the criteria under Section 203(a) of FLPMA will be considered for exchange only under the following situations (unless the benefiting agency agrees to pay for the fair market value of the public lands from its appropriated funds):

a. The land has received full sale exposure on the market for a two-year period without being sold.

b. The area contains interests in lands for which there is no sale authority, but which would be sold if sale authority existed, e.g., mineral estates.

c. The exchange will block Category II lands into "attractive" sales parcels.


d. Instances in which the exchange has been directed by specific legislation.

The present BLM/FS boundary adjustment study program will be continued in Category II areas. Any Category II lands transferred to BLM management will be made available for the asset management disposal program.

Category II lands not qualifying for sale under Section 203(a) can be exchanged under the provisions under Section 206 of FLPMA and other applicable laws.

3. Category III Lands: This category consists of public lands that require further study under the BLM land use planning process before being placed in Category I or II. Lands and mineral resources in Category III are not available for exchange until they are placed in Category I or placed in Category II and meet that categories exchange criteria. Category III lands may be included in the present BLM/FS boundary study program.

Any exchange proposal that is outside of the above guidelines, but appears to have sufficient merit for consideration, may be forwarded to the Director (320) for review. If the Washington Office determines the proposal has sufficient merit, it will be referred to the Secretary. Upon concurrence by the Secretary, the proposal will be forwarded to the Property Review Board for consideration. Requests for review should be made in the format provided with Instruction Memorandum No. 82-397.


Associate Director

APPENDIX P

1 and Management Act of 1976 (43 U.S.C. 1701) and
2 other statutes;

3 (3) the Federal Government should cooperate with
4 State and local governments, as well as with private,
5 nonprofit agencies, to promote and protect public recre-
6 ational areas, wildlife habitats, and other natural areas,
7 and should make certain Federal lands available at less
8 than fair market value;

9 (4) a decision to dispose of any tract of Federal
10 land should be made only after thorough inventory and
11 land use planning processes have been completed and
12 the public has been given sufficient opportunities to
13 comment on the proposed sale; and

14 (5) land exchange is a preferred method of con-
15 solidating Federal land holdings, completing authorized
16 land acquisitions, and resolving other land management
17 problems, and Executive agencies should fully evaluate
18 the value of lands for future exchange during the in-
19 ventory and planning processes.

20 DEFINITIONS

21 SEC. 3. For purposes of this Act—

22 (a) The term "Executive agency" has the same meaning
23 as in section 105 of title 5, United States Code.

24 (b) The term "Federal land" means any land and inter-
25 est in land owned by the United States.

EXEMPTIONS

SEC. 4. Nothing in this Act shall—

(1) restrict or otherwise apply to land exchanges;

or

(2) apply to the sale of any tract of Federal land authorized by the Act of June 14, 1926 (44 Stat. 741, chapter 758; 43 U.S.C. 869), or Public Law 97-465;

or

(3) apply to the sale of any tract of Federal land authorized by the Alaska National Interest Lands Conservation Act (Public Law 96-487).

GENERAL REQUIREMENTS FOR FEDERAL LAND SALES

SEC. 5. (a) Nothing in this Act shall create any new authority or expand any existing authority under which an Executive agency may sell, exchange, or transfer Federal land.

(b) No tract of Federal land may be offered for sale until such time as the Executive agency responsible for administering the tract, or the Executive agency responsible for administering the sale of the tract, has—

(1) completed an inventory of the tract which includes a determination of—

(A) the public recreational potential and scenic value of the tract;

1 (B) the potential for exchange of the tract;
2 and

3 (C) whether the tract should be used to pre-
4 serve the integrity of associated State, local, or
5 other recreational and natural areas;

6 (2) determined that the tract is no longer needed
7 by such Executive agency and that disposal of the
8 tract is in the public interest;

9 (3) provided reasonable opportunities for public
10 comment and review regarding the proposed sale of the
11 tract; and

12 (4) notified the Governor and the congressional
13 delegation of the State or States in which the tract
14 proposed for sale is located and the appropriate com-
15 mittees of the House of Representatives and the
16 Senate of the proposed sale at least thirty calendar
17 days in advance of announcing the availability of the
18 Federal land for sale.

19 (c) Inventories conducted to fulfill the requirements of
20 subsection (b)(1) of this section for Federal lands administered
21 by the Department of the Interior shall be conducted in ac-
22 cordance with the land use planning procedures required by
23 section 202 of the Federal Land Policy and Management Act
24 of 1976 (43 U.S.C. 1712). Inventories conducted to fulfill the
25 requirements of subsection (b)(1) of this section for Federal

1 lands administered by the Department of Agriculture shall be
2 conducted in accordance with the land use planning proce-
3 dures required by section 6 of the Forest and Rangeland Re-
4 newable Resources Planning Act of 1974 (16 U.S.C. 1604).

5 RESTRICTIONS ON THE SALE OF FEDERAL LANDS NEAR
6 RECREATION OR OTHER SIGNIFICANT AREAS

7 SEC. 6. (a) Federal lands—

8 (1) included within, or adjacent to, components of
9 the National Park System, National Wildlife Refuge
10 System, National Wilderness Preservation System, Na-
11 tional System of Trails, National Wild and Scenic
12 Rivers System, or Coastal Barrier Resource System;

13 (2) included within, or adjacent to, National
14 Monuments, National Recreation Areas, State and
15 local parks or recreation areas; or

16 (3) identified through a Federal, State, or local
17 land use planning process according to State law or
18 the State Comprehensive Outdoor Recreation Plan
19 (SCORP) or an amendment to a plan, as potentially
20 suitable for park, recreation, historical preservation,
21 wildlife enhancement, wetlands, or open space use;

22 may be sold at fair market value only in accordance with
23 section 5 of this Act and only after approval of Congress in
24 the manner described in section 203(c) of the Federal Land
25 Policy and Management Act (43 U.S.C. 1713(c)). Any acre-

1 age limit contained in such section shall not apply to land
2 under this section.

3 (b) Federal lands identified in subsection (a) may be con-
4 veyed for no cost or for up to 25 per centum of fair market
5 value without Congressional approval to State, local, county,
6 or regional governments, or to nonprofit corporations or asso-
7 ciations, for recreational or other suitable public purposes as
8 authorized by the Recreation and Public Purposes Act of
9 1926 (43 U.S.C. 869 et seq.) so long as such conveyances
10 are consistent with the purpose of the Act.



APPENDIX Q

APPENDIX Q

July 25, 1983, Interior
Press Release With
Harper July 7, 1983, and
Watt July 18, 1983.
Letters attached

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Interior Building
Washington, D.C. 20240

OFFICE OF THE SECRETARY

For Release July 25, 1983

INTERIOR DEPARTMENT REAFFIRMS THAT ASSET MANAGEMENT LAND DISPOSALS WILL BE
ONLY SMALL ISOLATED TRACTS, NOT LARGE AMOUNTS OF ACREAGE

Interior Secretary James Watt, reaffirming his pledge to Western Governors that the Administration will not be selling off large tracts of Federal lands, has sent the Governors a letter from the Federal Property Review Board (FPRB) which restates the traditional independence of the Interior Department in managing the disposal of lands which, Watt said, will be only "isolated tracts" or public lands adjacent to Western landlocked communities.

Secretary Watt today made public a letter from Edwin L. Harper, Chairman of the Property Review Board, making it clear that Watt and his land managers are free to make all the decisions where land is offered for sale at fair market value. The letter, in effect, exempts Interior Department lands from the so called asset management program.

Copies of the Harper letter have been mailed to all Western Governors along with a memorandum from Watt underscoring its salient points. Watt had discussed the matter with the Governors at Kalispell, Montana, June 29.

"One of the areas that continues to draw criticism deals with the disposal of lands no longer needed by the Federal Government," Watt wrote the Governors in his covering letter dated July 18. "I am satisfied that the mistakes of 1982 are not being, and will not be, repeated. Each Governor has been briefed, or his staff has been briefed, on our plans for disposing of the few isolated tracts in the respective States. Several of you did suggest that we needed to reduce the involvement of the Property Review Board of the White House in the Department of the Interior activities. I assured you that as a practical matter they were not involved..." The Harper letter formally establishes that fact.

Copies of the Harper letter and the Watt memorandum are attached.

x x x

THE WHITE HOUSE

WASHINGTON

July 7, 1983

Honorable James Watt
Secretary of the Interior
Washington, D.C. 20240

Dear Secretary Watt:

I am writing to clarify the role of the Property Review Board as it relates to the disposal of public lands by the Department of the Interior. In Executive Order 12348 the President directed the Board to develop and review policies of federal agencies as they relate to the management of real property. In this regard, the Board has consulted with the Department of the Interior to determine the Department's current land management policies and to give the Department guidance as to where those policies could be adjusted to make them consistent with the provisions and the philosophy of the Executive Order. The Executive Order did not intend nor has the Board presumed for the Board to become involved in the operational functioning of the agency in regard to the management of the public lands.

The Board has not requested that you consult with it in regard to transactions where land is sold for fair market value. We are interested in the Department's sales program in order to monitor the progress being made in the disposal process, but it is not our intent to in any way inhibit the statutory authority granted you to sell BLM lands. It would be helpful if the Department of the Interior provided the Board monthly with a summary of the previous month's sales activity.

I trust that this letter will clarify any confusion that may have existed concerning the Board's role in the Department of the Interior's disposal process.

Sincerely,



Edwin L. Harper
Chairman, Property Review Board



THE SECRETARY OF THE INTERIOR
WASHINGTON

July 18, 1983

MEMORANDUM TO WESTERN GOVERNORS

From: Secretary of the Interior

Subject: Good Neighbor Policy

I was particularly pleased with the opportunity to share with you the tremendous successes we have had in the last two and a half years. I felt your questions, both in private and public, dramatized the real progress that has been made. The questions that were not asked were more revealing than the questions that were. As I reflect back over the several meetings we have had in the past and compare them to the Montana meeting, I am delighted with the progress that has been made. That is not to suggest, however, that more progress does not yet remain to be realized.

One of the areas that continues to draw criticism deals with the disposal of lands no longer needed by the Federal Government. I am satisfied that the mistakes of 1982 are not being, and will not be, repeated. Each Governor has been briefed, or his staff has been briefed, on our plans for disposing of the few isolated tracts in the respective states. Several of you did suggest that we needed to reduce the involvement of the Property Review Board of the White House in the Department of the Interior activities. I assured you that as a practical matter they were not involved, but I would seek to formalize that relationship.

Upon returning to Washington, I have secured from the Chairman of the Property Review Board a letter that clearly states that the Board was not to "become involved in the operational functioning of the agency (Interior) in regard to the management of the public lands." I am attaching a copy of that letter just so that there can be no doubt. I am satisfied, based on the private conversations and the public dialogue, that there is no room for criticism of this program as it relates to future activities. Criticism of the past is for the most part justified.

I look forward to improving relationships and thank you for helping us to be as successful as we have been.

If you have any concerns or questions, please call. The rule continues to be that if I don't hear from you, things are going well.

APPENDIX S

LIB

IN REPLY REFER TO:



United States Department of the Interior

2200 (321)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

October 17, 1983

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Information Memorandum No. 84-12
Expires 9/30/84

To: All SD's

From: Director

Subject: FY 1983 Public Land Sale Results

Public land sale accomplishments during FY '83 are listed below.

	Acres		
State Office	Offered	Sold	Receipts
Arizona	12,870.27	2,611.82	\$ 560,891
California	5,525	660	691,252
Colorado	856.89	501.15	132,902
Eastern States Office	396.74	93.07	54,677
Idaho	1,511.937	1,077.103	274,676
Montana	2,079.068	1,734.118	247,775
Nevada	2,487.40	350.02	112,125
New Mexico	175.12	175.12	19,727.50
Oregon	1,211.17	960	148,400
Utah	2,286.15	2,046.15	261,000
Wyoming	669.58	512.36	459,875.26
Total Section 203 Sales	30,069.325	10,120.911	\$2,963,300.76
Burton/Santini Sales	954.88	255.95	\$5,198,380
Total Sales	31,024.205	10,376.861	\$8,161,680.76

Vincent J. Hecker
Assistant Director, Land Resources
Acting